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12 WISHTOYO FOUNDATION and VENTURA COASTKEEPER

14 **UNITED STATES DISTRICT COURT**
15 **CENTRAL DISTRICT OF CALIFORNIA**

16 WISHTOYO FOUNDATION, and
17 VENTURA COASTKEEPER,
18 a Program of the WISHTOYO
19 FOUNDATION,

20 Plaintiffs,

21 vs.
22

23 ARCTURUS MANUFACTURING
24 CORPORATION, PRECISION
25 CASTPARTS CORP., CARLTON
26 FORGE WORKS, BERKSHIRE
27 HATHAWAY, INC., DOES 1 through
28 10,

Defendants.

Case No. 2:17-cv-02229 CBM

**COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF AND
CIVIL PENALTIES**

**(Federal Water Pollution Control Act,
33 U.S.C. §§ 1251 to 1387)**

1 WISHTOYO FOUNDATION and its VENTURA COASTKEEPER
2 PROGRAM (“WISHTOYO” or “Plaintiff”), a California non-profit corporation, by
3 and through its counsel, hereby alleges:
4

5 **I. JURISDICTION AND VENUE**

6 1. This complaint seeks relief for ongoing and continuous violations by
7 Defendants Arcturus Manufacturing Corporation, Precision Castparts Corp., Carlton
8 Forge Works and Berkshire Hathaway, Inc. (collectively “Defendants” or
9 “ARCTURUS”) of the Federal Water Pollution Control Act, 33 U.S.C. § 1251, *et seq.*
10 (the “Clean Water Act” or “Act”) and the National Pollutant Discharge Elimination
11 System (“NPDES”) Permit No. CA S000001, State Water Resources Control Board
12 Water Quality Order Nos. 91-13-DWQ, 92-12-DWQ, 97-03-DWQ and 2014-0057-
13 DWQ (“Permit” or “General Permit”) resulting from industrial operations at
14 Defendants’ nine-acre metal forging facility located at 6001 Arcturus Ave., in Oxnard,
15 California 93033 (“Facility”).
16

17 2. The relief requested is authorized pursuant to 28 U.S.C. §§ 2201–02
18 (power to issue declaratory relief in case of actual controversy and further necessary
19 relief based on such a declaration); 33 U.S.C. §§ 1319(b), 1365(a) (injunctive relief);
20 and 33 U.S.C. §§ 1319(d), 1365(a) (civil penalties).
21

22 3. On January 17, 2017, Plaintiff provided notice of Defendants’ violations
23 of the Act, and of its intention to file suit against Defendants, to Defendants, the
24 Administrator of the United States Environmental Protection Agency (“EPA”); the
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26
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1 Administrator of EPA Region IX; the Executive Director of the State Water
2 Resources Control Board ("State Board"); and the Executive Officer of the California
3 Regional Water Quality Control Board, Los Angeles Region ("Regional Board"), as
4 required by the Act, 33 U.S.C. § 1365(b)(1)(A). A true and correct copy of the notice
5 letter is attached as Exhibit A, and is incorporated by reference.
6

7
8 4. More than sixty days have passed since notice was served on
9 ARCTURUS and the State and federal agencies. Plaintiff is informed and believes,
10 and thereupon alleges, that neither the EPA nor the State of California has
11 commenced or is diligently prosecuting a court action to redress the violations alleged
12 in this complaint. This action's claim for civil penalties is not barred by any prior
13 administrative penalty under Section 309(g) of the Act, 33 U.S.C. § 1319(g).
14
15

16 5. Venue is proper in the Central District of California pursuant to Section
17 505(c)(1) of the Act, 33 U.S.C. § 1365(c)(1), because the source of the violations is
18 located within this judicial district.
19

20 **II. INTRODUCTION**

21
22 6. This complaint seeks relief for discharges of storm water and non-storm
23 water pollutants from the Facility. Defendants' failure to comply with the discharge,
24 treatment technology, monitoring requirements, and other procedural and substantive
25 requirements of the Permit and the Act are ongoing and continuous.
26

27 7. With every significant rainfall event millions of gallons of polluted storm
28 water originating from industrial operations, such as those conducted by Defendants,

1 pour into storm drains and local waterways. The consensus among agencies and water
2 quality specialists is that storm water pollution accounts for more than half of the total
3 pollution entering surface waters each year.
4

5 8. Ventura County's waterways where the Facility is located are
6 ecologically sensitive areas and are essential habitat for dozens of fish and bird
7 species as well as macro-invertebrate and invertebrate species. The waterways provide
8 aesthetic opportunities, such as wildlife observation, and the public uses these
9 waterways for activities such as water contact sports and non-contact recreation.
10
11

12 9. Industrial facilities, like the Defendants', that are discharging storm water
13 and non-storm water contaminated with sediment, heavy metals, and other pollutants
14 that contribute to the impairment of downstream waters and aquatic dependent
15 wildlife, and harm the special aesthetic and recreational significance of Ventura's
16 waterways have for people in the surrounding communities. These contaminated
17 discharges can and must be controlled for the ecosystem to regain its health.
18
19

20 **III. PARTIES**

21 **A. Wishtoyo Foundation and its Ventura Coastkeeper Program.**

22
23 10. Founded in 1997, Plaintiff WISHTOYO is a 501(c)3 non-profit public
24 benefit grassroots corporation organized under the laws of the State of California.
25

26 11. The Wishtoyo Foundation's mission is to protect and preserve Chumash
27 culture, the culture of First Nations, and the natural resources all people depend upon.
28

12. The Wishtoyo Foundation's office is located at 9542 Telephone Road

1 #432 Ventura, CA 93004.

2 13. Ventura Coastkeeper is a program of the Wishtoyo Foundation.

3 14. Ventura Coastkeeper's mission is to protect, preserve, and restore the
4 ecological integrity and water quality of Ventura County's inland water bodies,
5 coastal waters, and watersheds. Ventura Coastkeeper strives to maintain clean and
6 ecologically healthy waters for all living beings in Ventura County's community
7 through advocacy, education, restoration projects, community mobilizing, actively
8 seeking Federal and State agency implantation of the Clean Water Act, and, where
9 necessary, directly initiating enforcement actions on behalf of itself and its members.
10

11 15. Plaintiff has approximately 700 members who live, use, enjoy and/or
12 recreate in and around Ventura County watersheds and the waters that receive
13 Defendants' polluted storm water discharges, including the Ormond Beach Wetlands,
14 Mugu Lagoon, Oxnard Drain #3, and the Pacific Ocean.
15

16 16. Defendants' violations of the Storm Water Permit and the Act impair
17 Coastkeeper's members' uses and enjoyment of these waters.
18

19 17. The interests of WISHTOYO's members have been, are being, and will
20 continue to be adversely affected by Defendants' failure to comply with the Act, the
21 Storm Water Permit, and the California Ocean Plan¹. The relief sought herein will
22 redress the harms to Plaintiff caused by Defendants' activities. Continuing
23
24
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27 ¹ California Water Code §§ 13000 et seq.; State Water Resources Control Board, 2005 California Ocean Plan,
28 Water Quality Control Plan for Ocean Waters of California, adopted by the State Water Resources Control Board on
January 20, 2005 and April 21, 2005, approved by the Office of Administrative Law on October 12, 2005, and
approved by the U. S. Environmental Protection Agency on February 14, 2006.

1 commission of the acts and omissions alleged above will irreparably harm
2 WISHTOYO's members, for which harm they have no plan, speedy, or adequate
3 remedy at law.
4

5 **B. The Owner and Operator of the ARCTURUS Facility.**

6 18. WISHTOYO is informed and believes, and thereon alleges, that
7 Defendant ARCTURUS Manufacturing Corporation is a California corporation.
8
9 WISHTOYO is informed and believes, and thereon alleges, that the registered agent
10 for service of process for Arcturus Manufacturing Corporation is National Registered
11 Agents, Inc. located at 818 W. Seventh St., Ste. 930 Los Angeles, CA 90017.
12

13 19. WISHTOYO is informed and believes, and thereon alleges, that
14 Defendant Precision Castparts Corp. is an Oregon corporation.
15

16 20. WISHTOYO is informed and believes, and thereon alleges, that
17 Defendant Carlton Forge Works is a California corporation.
18

19 21. WISHTOYO is informed and believes, and thereon alleges, that
20 Defendant Berkshire Hathaway, Inc. is a Delaware corporation.
21

22 22. WISHTOYO is informed and believes, and thereon alleges, that the
23 Facility is owned and operated by Arcturus Manufacturing Corporation and Carlton
24 Forge Works, a company of Precision Castparts Corp., recently acquired by Berkshire
25 Hathaway, Inc. Defendants are "person[s]" within the meaning of section 502(5) of
26 the Clean Water Act, 33 U.S. C. §1362(5).
27

28 23. Upon information and belief, Plaintiff alleges that the true names, or

1 capacities of DOES 1 through 10, inclusive (the “DOES”), whether individual,
2 corporate, associate or otherwise, are presently unknown to Plaintiff, who therefore
3 sue said Defendants by such fictitious names. Plaintiff will amend this Complaint to
4 show their true names and capacities when the same have been ascertained. Whether
5 or not ARCTURUS is associated with any other individual, corporate, associate or
6 otherwise was not immediately apparent through an initial investigation completed by
7 Plaintiff.
8
9

10 **IV. STATUTORY BACKGROUND**

11 **A. The Clean Water Act.**

12
13 24. Section 301(a) of the Act, 33 U.S.C. § 1311(a), prohibits the discharge
14 of any pollutant into waters of the United States unless the discharge complies with
15 various enumerated sections of the statute. Among other things, section 301(a)
16 prohibits discharges not authorized by, or in violation of, the terms of NPDES
17 permits issued pursuant to section 402 of the Act, 33 U.S.C. §§ 1311(a) and 1342(b).
18 The Act requires all point source discharges of pollutants to waters of the United
19 States be regulated by an NPDES permit. 33 U.S.C. § 1311(a); *see* 40 C.F.R. §
20 122.26(c)(1).
21
22

23
24 25. “Waters of the United States” are defined as “navigable waters,” and
25 “all waters which are currently used, were used in the past, or may be susceptible to
26 use in interstate or foreign commerce, including waters which are subject to the ebb
27 and flow of the tide.” 33 U.S.C. § 1362(7); 40 C.F.R. § 122.2.
28

1 26. The EPA promulgated regulations defining “waters of the United
2 States.” *See* 40 C.F.R. § 122.2. The EPA interprets waters of the United States to
3 include not only traditionally navigable waters, but also other waters, including
4 waters tributary to navigable waters, wetlands adjacent to navigable waters, and
5 intermittent streams that could affect interstate commerce.
6

7 27. The Act confers jurisdiction over waters that are tributaries to
8 traditionally navigable waters where the water at issue has a significant nexus to the
9 navigable water. *See Rapanos v. United States*, 547 U.S. 715 (2006); *see also N. Cal.*
10 *River Watch v. City of Healdsburg*, 496 F.3d 993 (9th Cir. 2007).
11

12 28. A significant nexus is established if the water in question “either alone
13 or in combination with similarly situated lands in the region, significantly affect the
14 chemical, physical, and biological integrity of other covered waters.” *Rapanos*, 547
15 U.S. at 780; *N. Cal. River Watch*, 496 F.3d at 999-1000.
16

17 29. Section 505(a)(1) of the Act provides for citizen enforcement actions
18 against any “person” who is alleged to be in violation of an “effluent standard or
19 limitation...or an order issued by the Administrator or a State with respect to such a
20 standard or limitation.” *See* 33 U.S.C. §§ 1365(a)(1) and 1365(f).
21

22 30. An action for injunctive relief is authorized under section 505(a) of the
23 Act. *See* 33 U.S.C. § 1365(a)(1).
24

25 31. Each separate violation of the Act subjects the violator to a penalty of up
26 to \$51,570 per day for violations occurring after November 2, 2015; and up to
27
28

1 \$37,500 per day per violation for violations occurring prior to and including
2 November 2, 2015. *See* 33 U.S.C. §§ 1319(d) and 1365(a); 40 C.F.R. § 19.4
3 (Adjustment of Civil Monetary Penalties for Inflation).
4

5 32. Section 505(d) of the Act allows prevailing or substantially prevailing
6 parties to recover litigation costs, including attorneys' fees, experts' fees, and
7 consultants' fees. *See* 33 U.S.C. § 1365(d).
8

9 **B. California's Storm Water Permit.**

10 33. The State Board is charged with regulating pollutants to protect
11 California's water resources. *See* Cal. Water Code § 13001.
12

13 34. Section 402(p) of the Act establishes a framework for regulating
14 industrial storm water discharge under the NPDES permit program. 33 U.S.C. §
15 1342(p).
16

17 35. Section 402(b) of the Act allows each state to administer an EPA-
18 approved NPDES permit program for regulating the discharge of pollutants,
19 including discharges of polluted storm water. *See* 33 U.S.C. § 1342(b).
20

21 36. States with approved NPDES permit programs are authorized by Section
22 402(b) to regulate industrial storm water discharges through individual NPDES
23 permits issued to discharge and/or through the issuance of a statewide general
24 NPDES permit applicable to all industrial storm water discharges. *See* 33 U.S.C. §
25 1342(b).
26
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37. California is a state authorized by EPA to issue NPDES permits. The

1 Permit is a statewide general NPDES permit issued by the State Board pursuant to
2 the Act.

3 38. Between 1997 and June 30, 2015, the Permit in effect in California was
4 Order No. 97-03-DWQ, which WISHTOYO refers to herein as the "1997 Permit."

5 39. On July 1, 2015, California re-issued the Permit pursuant to Order No.
6 2014-0057-DWQ's NPDES, which is referred to herein as the "2015 Permit."
7

8 40. The 2015 Permit superseded the 1997 Permit, except for enforcement
9 purposes, and its terms are as stringent, or more so, than the terms of the 1997
10 Permit. *See* 2015 Permit, Findings, ¶ 6.
11

12 41. In order to discharge storm water lawfully in California, industrial
13 dischargers must secure coverage under the Permit and comply with its terms, or
14 obtain and comply with an individual NPDES permit. 1997 Permit, Finding #2; 2015
15 Permit, Findings, ¶ 12. Prior to beginning industrial operations, dischargers are
16 required to apply for coverage under the Permit by submitting a NOI to the State
17 Board. 1997 Permit, Finding #3; 2015 Permit, Findings, ¶ 17.
18

19 42. Compliance with the Permit constitutes compliance with the Act for
20 purposes of storm water discharges. 33 U.S.C. §§ 1311(b)(2)(A), 1311(b)(2)(E).
21 Conversely, violations of the Permit are violations of the Act. 1997 Permit, Section
22 C(1); 2015 Permit, Section XXI(A).
23
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C. The Permit's Discharge Prohibitions, Effluent Limitations, and Receiving Water Limitations.

43. The Permit contains a Discharge Prohibition on the direct or indirect discharge of materials other than storm water ("non-storm water discharges") that is not otherwise authorized by an NPDES permit to waters of the United States. 1997 Permit, Section A(1); 2015 Permit, Section III(B).

44. The Permit contains an Effluent Limitation that requires permittee facilities to reduce or prevent pollutants in storm water discharges through the implementation of Best Available Technology Economically Achievable ("BAT") for toxic or non-conventional pollutants, and Best Conventional Pollutant Control Technology ("BCT") for conventional pollutants. 40 C.F.R. §§ 401.15-16; 1997 Permit, Section B(3); 2015 Permit, Section V(A). BAT and BCT include both structural (e.g. installation of advanced filtration and treatment systems, curbs to direct storm water flows, infiltration galleries) and non-structural (e.g. sweeping, and employee education and training) measures.

45. In order to comply with the statutory BAT/BCT mandate, covered facilities must implement site-specific structural and non-structural Best Management Practices ("BMPs") designed to prevent or reduce discharges with pollutant concentrations that violate the Permit, and therefore the Act.

46. EPA's NPDES Storm Water Multi-Sector General Permit for Industrial Activities ("MSGP") include numeric benchmarks for pollutant concentrations in

1 storm water discharges (“EPA Benchmarks”) that are numeric thresholds to aid in
2 determining whether a facility discharging industrial storm water had implemented
3 the requisite BAT and/or BCT as mandated by the Act. *See* United States
4 Environmental Protection Agency NPDES Multi-Sector General Permit for Storm
5 Water Discharges Associated with Industrial Activity, as modified effective May 9,
6 2009.
7

8
9 47. EPA’s Benchmarks serve as objective measures for evaluating whether
10 the BMPs designed and implemented at a facility achieve the statutory BAT/BCT
11 standards. *See* MSGP, 80 Fed. Reg. 34,403, 34,405 (June 16, 2015); *see also* MSGP,
12 73 Fed. Reg. 56,572, 56,574 (Sept. 29, 2008); *see also* MSGP, 65 Fed. Reg. 64,746,
13 64,766-67 (Oct. 30, 2000).
14
15

16 48. The State Board established Numeric Action Levels (“NALs”) in the
17 2015 Permit. *See* 2015 Permit, Section V(A). NALs are derived from, and function
18 similar to, EPA benchmarks. *See* 2015 Permit Fact Sheet, Section I(D)(5).
19
20 Benchmarks and NALs represent pollutant concentrations at which a storm water
21 discharge could impair, or contribute to impairing, water quality and/or affect human
22 health.
23

24 49. The Permit also contains various Receiving Water Limitations. 1997
25 Permit, Receiving Water Limitation C(1)-(2); 2015 Permit, Section VI(A).
26
27 Receiving Waters are those surface or other waters to which pollutants are discharged
28 from a given facility.

1 50. The first Receiving Water Limitation is that stormwater discharges shall
2 not cause or contribute to an exceedance of any applicable water quality standard
3 (“WQS”). *Id.*

4
5 51. WQS are pollutant concentration levels determined by the State Board,
6 the various regional boards, and the EPA to be protective of the beneficial uses of the
7 water that receive polluted discharges. WQS applicable to the discharges covered by
8 the Permit include, but are not limited to, those set out in the *Water Quality Control*
9 *Plan, Los Angeles Basin (Basin Plan for the Coastal Watersheds for Los Angeles and*
10 *Ventura Counties)*, California Regional Water Quality Control Board, Los Angeles
11 Region 4 (adopted June 13, 1994, as amended) (“Basin Plan”) and in the Criteria for
12 Priority Toxic Pollutants for the State of California (“CTR”), 40 C.F.R. § 131.38.
13
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15
16 52. The second Receiving Water Limitation is that storm water discharges
17 shall not adversely impact human health or the environment. 1997 Permit, Receiving
18 Water Limitation C(1); 2015 Permit, Section VI(B).
19

20 53. The third Receiving Water Limitation is that concentrations of pollutants
21 in storm water discharges shall not threaten to cause pollution or a public nuisance.
22
23 *See* 2015 Permit, Section VI(C).

24 54. The Facility violates the Permit’s Receiving Water Limitation when its
25 storm water discharges contain pollutant levels that: i) exceed an applicable WQS; ii)
26 exceed levels known to adversely impact aquatic species and the environment; or iii)
27 threaten to cause pollution.
28

1 55. The Basin Plan identifies the "beneficial uses" of water bodies in the
2 region. The Basin Plan identifies the beneficial uses for waters in the Santa Clara
3 River Watershed ("Beneficial Uses") that receive polluted storm water discharges
4 from the ARCTURUS Facility. These Beneficial Uses include: water contact
5 recreation (REC-1), non-contact water recreation (REC-2), navigation (NAV),
6 commercial and sport fishing (COMM), estuarine habitat (EST), wildlife habitat
7 (WILD), rare, threatened, or endangered species (RARE), migration of aquatic
8 organisms (MIGR) and spawning, reproduction and development (SPWN), marine
9 habitat (MAR), Wetland Habitat (WET), Rare, Threatened, or Endangered Species
10 (RARE), Shellfish Harvesting (SHELL), and Preservation of Biological Habitats
11 (BIOL) such as Areas of Special Biological Significance (ASBS). See Basin Plan,
12 pp. 2-1 - 2-5. Non-contact water recreation use is defined as "[u]ses of water for
13 recreational activities involving proximity to water, but not normally involving
14 contact with water where water ingestion is reasonably possible. These uses include,
15 but are not limited to, picnicking, sunbathing, hiking, beachcombing, camping,
16 boating, tidepool and marine life study, hunting, sightseeing, or aesthetic enjoyment
17 in conjunction with the above activities." Basin Plan at 2-2. Contact recreation use
18 includes fishing and wading. Id.

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25 56. Discharges of pollutants at levels above WQS contribute to the
26 impairment of the beneficial uses of the waters receiving the discharges and
27 constitute violations of the Permit and Act.
28

1 57. The Basin Plan also narrative standard, including that inland surface
2 waters "shall not contain suspended or settleable materials in concentrations that
3 cause nuisance or adversely affect beneficial uses." Basin Plan, 3-37.

4
5 58. The Basin Plan also includes a toxicity standard requiring inland surface
6 waters "be maintained free of toxic substances in concentrations that are toxic to, or
7 that produce detrimental physiological responses in human, plant, animal or aquatic
8 life." Basin Plan, 3-38.

9
10 59. The CTR includes numeric criteria set to protect human health and the
11 environment in the State of California.²

12
13 60. Discharges with pollutant levels in excess of the CTR criteria, the Basin
14 Plan standards, and/or other applicable WQS are violations of the Permit's Receiving
15 Water Limitations.

16
17 61. WQS applicable to the Facility include, but may not be limited to, those
18 detailed in TABLE 1 below.

19
20 62. According to the State Board's 2012 303 (d) List of Impaired Water
21 Bodies, the Ormond Beach Wetlands are impaired for nitrates, pH, trash, and E.Coli.
22 Mugu Lagoon (Calleguas Creek Reach 1) and Oxnard Drain #3, which is the western
23 most arm of Ormond Beach Lagoon and Wetlands adjacent to the Facility, are listed
24 in the State Board's 2012 303 (d) List of Impaired Water Bodies as impaired for
25
26

27
28 ² U.S. Env'tl. Prot. Agency, Water Quality Standards; Establishment of Numeric Criteria for Priority Toxic
Pollutants for the State of California Fact Sheet, EPA 823-00-008 (Apr. 2000) *available at*
<http://nepis.epa.gov/Exe/ZyPURL.cgi?Dockey=p1007BKN.txt>
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1 sediment, sediment toxicity, bacteria, and metals including copper, mercury, nickel,
2 zinc, and pesticides. Only 250 acres of the 1,100 acres of the Ormond Beach
3 Wetlands remain. These remaining acres, critical to retaining the ecosystem services
4 and all beneficial uses of the Wetlands, are degraded in large part from contaminated
5 industrial, municipal, and agricultural storm water runoff and dry weather discharges.
6

7
8 **D. The Permit's Planning and BMP Design Requirements.**

9 63. Dischargers must develop and implement a Storm Water Pollution
10 Prevention Plan ("SWPPP") at the time industrial activities begin. 1997 Permit,
11 Sections A(1)(a) and E(2); 2015 Permit, Sections I(I) (Finding 54) and X(B).
12

13 64. The SWPPP must identify and evaluate sources of pollution associated
14 with industrial activities that may affect the quality of stormwater and authorized
15 non-stormwater discharges from the facility. 1997 Permit, Section A(2); 2015
16 Permit, Section X(G).
17

18 65. The SWPPP must identify and describe site-specific BMPs to reduce or
19 prevent pollutants associated with industrial activity in storm water and authorized
20 non-stormwater discharges. 1997 Permit, Section A(2); 2015 Permit, Section X(H).
21 The SWPPP must also include BMPs that achieve pollutant discharge reductions
22 attainable via BAT and BCT. 1997 Permit, Order Section A(2); 2015 Permit, Section
23 I(D) (Finding 32), Section X(C).
24
25
26

27 66. The SWPPP must include: i) a narrative description and summary of all
28 industrial activity, potential sources of pollution, and potential pollutants; ii) a site

1 map indicating the storm water conveyance system, associated points of discharge,
2 direction of flow, areas of actual and potential pollutant contact, including the extent
3 of pollution-generating activities, nearby water bodies, and pollutant control
4 measures; iii) a description of storm water management practices; iv) a description of
5 the BMPs to be implemented to reduce or prevent pollutants in storm water
6 discharges and authorized non-storm water discharges; v) the identification and
7 elimination of non-storm water discharges; vi) identify and locate where materials
8 are being shipped, received, stored, handled, as well as typical quantities of such
9 materials and the frequency with which they are handled; vii) a description of dust
10 and particulate generating activities; and viii) a description of individuals and their
11 current responsibility for developing and implementing the SWPPP. 1997 Permit,
12 Section A(1)-(10); 2015 Permit, Section X.

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16
17 67. The 2015 Permit further requires certain SWPPP enhancements,
18 including a more comprehensive assessment of potential pollutant sources and more
19 specific BMP descriptions. *See* 2015 Permit Sections X(G)(2), (4), (5).

20
21 68. The objectives of the SWPPP are to identify and evaluate source of
22 pollutants associated with industrial activities that may affect the quality of storm
23 water discharges, to identify, design and implement site-specific BMPs to prevent the
24 exposure of pollutants to storm water, and to reduce or prevent the discharge of
25 polluted storm water from industrial facilities. 1997 Permit, Section A(2); 2015
26 Permit, Section X.

1 69. The objectives of the requirement to develop, maintain and revise a
2 SWPPP are to identify pollutant sources and develop BMPs that reduce or prevent
3 polluted storm water from negatively affecting Receiving Waters and California
4 communities. *See* 1997 Permit Section A(2); *see also* 2015 Permit Section X(C).
5 BMPs must achieve compliance with the Permit's Effluent Limitations and
6 Receiving Water Limitations. To ensure compliance, the SWPPP must be evaluated
7 and revised as necessary. *See* 1997 Permit Sections A(9)-(10); *see also* 2015 Permit
8 § X(B). Failure to develop or implement an adequate SWPPP (or revise an existing
9 SWPPP, as necessary) constitutes an independent Permit violation. *See* 2015 Permit,
10 Fact Sheet, Section I(1).
11

12 70. The Permit also requires that the discharger conduct an annual
13 comprehensive site compliance evaluation that includes a review of all visual
14 observation records, inspection reports and sampling analysis data, a visual
15 inspection of all potential pollutant sources for evidence of, or the potential for,
16 pollutants entering the drainage system, a review and evaluation of all BMPs to
17 determine whether the BMPs are adequate, properly implemented and/or maintained,
18 or whether additional BMPs are needed, and a visual inspection of equipment needed
19 to implement the SWPPP. 1997 Permit, Sections A(9)(a)-(c); 2015 Permit, Section
20 XV.
21

22 71. Section A(9)(d) of the 1997 Permit requires that the discharger submit
23 an evaluation report that includes an identification of personnel performing the
24 COMPLAINT
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27
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1 evaluation, date(s) of the evaluation(s) necessary SWPPP revisions, a schedule for
 2 implementing SWPPP revisions, any incidents of non-compliance and the corrective
 3 actions taken, and a certification that the discharger is in compliance with the Permit.
 4 1997 Permit; Section A(9)(d)(i)-(vi). If certification cannot be provided, the
 5 discharger must explain in the evaluation report why the facility is not in compliance.
 6 *Id.*, Section A(9)(d). The evaluation report shall be submitted as part of the Annual
 7 Report specified in Section B(14) of the Permit. *Id.*

10 **E. The Permit's Monitoring and Reporting Requirements**

11 72. The 1997 Permit required facility operators to develop and implement a
 12 monitoring and reporting program ("M&RP") when industrial activities begin at the
 13 facility. 1997 Permit, Sections B(1)-(2) and E(3). The 2015 Permit also requires
 14 implementation of an M&RP. 2015 Permit, Sections X(I) and XI.

15 73. The objectives of the M&RP are to inform discharges about the
 16 effectiveness of BMPs designed in the planning phase and implemented on the
 17 ground. Where the M&RP indicates that BMPs are not adequate to prevent or reduce
 18 pollutants in storm water discharges, permittees have an obligation to re-design
 19 BMPs and/or improve BMP implementation as necessary to ensure that storm water
 20 discharges are in compliance with the Permit's Discharge Prohibitions, Effluent
 21 Limitations and Receiving Water Limitations. *See* 1997 Permit, Section B(2); *see*
 22 *also* 2015 Permit, Sections X(I) and XI.

23 74. The 2015 Permit requires facility operators to visually observe, monitor

1 and sample storm water discharges to ensure that the facility is complying with its
2 obligations under the Permit. 2015 Permit, Sections I(J) (Findings 55-56) and XI.

3 75. The M&RP must be revised as necessary to ensure Permit compliance.
4
5 1997 Permit, Section B(2)(d); 2015 Permit, Section XI(A)(4).

6 76. Dischargers must conduct monthly visual observations of storm water
7 discharges as part of a legally adequate M&RP. 1997 Permit, Section B(4)(a); 2015
8 Permit, Section XI(A).

9
10 77. Dischargers must observe and document the presence of any floating
11 and suspended materials, oil and grease, discolorations, turbidity, or odor in a
12 discharge, and the source of any pollutants in storm water discharges from the
13 facility.
14

15
16 78. Dischargers are required to maintain detailed records of each
17 observation, and corrective action taken to reduce or prevent pollutant from
18 contacting storm water discharges. *See* 1997 Permit, Section B(4)(c); *see also* 2015
19 Permit, Section XI(A)(3).
20

21 79. The Permit requires dischargers to revise the SWPPP as necessary to
22 ensure that BMPs are effectively reducing and/or eliminating pollutants from
23 entering surface waters from the facility. 1997 Permit, Section B(4)(c), 2015 Permit,
24 Section XI(B)(1).
25
26

27 80. The Permit requires dischargers to visually observe and collect samples
28 of storm water discharges from each location where storm water is discharged. 1997

1 Permit, Sections B(5) and B(7); 2015 Permit, Section XI(B)(4).

2 81. Section B(5)(a) of the 1997 Permit required dischargers to collect storm
3 water samples during the first hour of discharge from the first storm event of the Wet
4 Season and at least one other storm event in the Wet Season. All storm water
5 discharge locations must be sampled. Facility operators that do not collect samples
6 from the first storm event of the Wet Season are still required to collect samples from
7 two other storm events of the Wet Season and must explain in the Annual Report
8 why the first storm event was not sampled.
9

10
11 82. Section B(5)(b) required that sampling conducted pursuant to the 1997
12 Permit occur during scheduled facility operating hours that are preceded by at least
13 three (3) working days without storm water discharge.
14

15
16 83. Section XI(B)(1) of the 2015 Permit requires sampling from a
17 Qualifying Storm Event ("QSE"), which is a precipitation event that produces a
18 discharge for at least one drainage area and is preceded by forty-eight (48) hours with
19 no discharge from any drainage area.
20

21 84. Dischargers are required to collect samples of storm water within 4
22 hours of the start of facility operations if the QSE began within the previous 12-hour
23 period, e.g. for storms with discharges that begin during the night for facilities with
24 day-time operations. 2015 Permit, Section XI(B)(5)(b).
25

26
27 85. Section XI(B)(2) of the 2015 Permit requires dischargers to collect and
28 analyze storm water samples from two (2) QSEs within the first half of each

1 reporting year (July 1 to December 31), and two (2) QSEs within the second half of
2 each reporting year (January 1 to June 30).

3 86. Section XI(B)(11) of the 2015 Permit, among other requirements,
4 provides that permittees must submit all sampling and analytical results for all
5 samples via SMARTS within thirty (30) days of obtaining all results for each
6 sampling event.
7

8
9 87. The Permit requires all dischargers to analyze each sample for pH,
10 specific conductance ("SC"), TSS, and either total organic carbon ("TOC") or Oil &
11 Grease ("O&G"). 1997 Permit, Section B(5)(c)(i); 2015 Permit, Sections
12 XI(B)(6)(a)-(b).
13

14 88. Facilities such as the ARCTURUS facility classified as Standard
15 Industrial Classification ("SIC") code 3462 (Iron and Steel Forgings) must to also
16 analyze storm water samples for aluminum ("Al"), iron ("Fe"), nickel ("Ni"), nitrate
17 + nitrite nitrogen ("N+N") and zinc ("Zn"). 1997 Permit, Section B(5)(c)(iii) and
18 Table D; 2015 Permit, Section XI(B)(6)(d) and Table 1.
19
20

21 **V. STATEMENT OF FACTS**

22
23 **A. The Facility**

24 89. Upon information and belief, ARCTURUS first obtained Permit
25 coverage for the Facility on January 31, 1992 ("NOI 1992"); enrolled for coverage
26 under the 1997 Permit on May 8, 1997 ("NOI 1997"); and then on March 6, 2015
27 obtained coverage under the 2015 Permit ("NOI 2015"). The Waste Discharge
28

1 Identification ("WDID") number for the ARCTURUS Facility is 4 561000020. The
2 Primary SIC code is 3426 (Iron and Steel Forgings).

3 90. The Facility is approximately 9 acres of both impervious and pervious
4 surfaces. At this facility, ARCTURUS forges, flash cuts, liquefies, handles,
5 maintains, and loads, and unloads both ferrous and non-ferrous parts. Industrial
6 processes conducted at the site include two-piece can making, end making, coating,
7 and palletizing finished product for shipment. Storm water runoff from activities at
8 6001 Arcturus Rd. flow from the property into at least seven discharge points toward
9 unpaved areas along the perimeter of the facility and to sumps that direct storm water
10 to McWane Blvd. where a PVC pipe outlet lies. While discharges from the Facility
11 may drain into as many as four different storm sewer drains, three of which are
12 located within the Facility's borders, facility managers do not explain to where the
13 runoff to McWane Blvd. or the PVC pipe outlet drains (SWPPP 2017, p.5). They do
14 explain, however, that when it is full or overwhelmed it drains east to undisclosed
15 areas.

16 91. According to information and belief, ARCTURUS forges iron and steel
17 (ferrous) and aluminum, nickel, and titanium (non-ferrous) castings for the aerospace
18 and defense industries. In order to accomplish these objectives, the Facility's
19 industrial activities include, but may not be limited to: metal heating, forging,
20 grinding, polishing, and sand blasting. These activities involve the use of a group of
21 die and part ovens and steam-powered hammers. Processing and cutting raw metals

1 as well as polishing and grinding of forged parts occurs. Additionally, processes
2 include manufacturing, steam cleaning, recycling, disposal, as well as receipt and
3 transfer of both raw and forged materials. Hazardous waste, absorbent waste (grit,
4 dirt, metal particles, lubricant, and oil), solid waste, and recycleable materials are
5 stored and transferred on and off-site the facility regularly.
6

7
8 92. On information and belief, Plaintiff alleges that the management
9 practices at the Facility do not prevent the sources of contamination described above
10 from causing the discharge of pollutants to waters of the United States. Of particular
11 concern to WISHTOYO are: the unaccounted for runoff from storm sewer and pipe
12 outlet drains; the hazardous concentrations of metal shavings, dust, and rust chips on
13 the ground in various locations; uncovered hazardous waste drums located in various
14 locations; and the unlawful transport and disposal of this waste in unauthorized
15 locations that can reach receiving waters..
16
17

18
19 93. Since 1992, ARCTURUS has taken samples or arranged for samples to
20 be taken of storm water discharges at the Facility. The sample results were reported
21 in the Facility's annual reports submitted to the Regional Board and or the City of
22 Oxnard Public Works. ARCTURUS certified each of those annual reports pursuant
23 to Sections A and C of the General Permit.
24

25
26 94. According to information available to WISHTOYO, including a
27 thorough review of both electronic and hard copy files held by the State Board, the
28 Facility has been in continuous violation of the Permit's Effluent and Receiving

1 Water Limitations for the entirety of the relevant statute of limitations, at least with
2 respect to TSS, aluminum (Al), copper (Cu), iron (Fe), nickel (Ni), nitrates (N+N),
3 zinc (Zn), and Oil & Grease (O&G) all of which contribute to pH and specific
4 conductance (SC) exceedances as well. The pattern of exceedances of
5 benchmark/NAL values over more than 20 years confirms ARCTURUS consistent
6 failure to implement adequate BMPs and its ongoing violation of the Permit and Act.
7
8

9 95. As a consequence of the Facility's failure to develop and implement
10 BMPs, during rain events storm water carries pollutants from the Facility into the
11 storm sewer system and/or directly into the Receiving Waters. These discharges of
12 polluted storm water negatively impact WISHTOYO's members' use and enjoyment
13 of the Ormond Beach and their tributary waters, Mugu Lagoon and its tributary
14 waters, Oxnard Drain # 3 and its tributary waters, the Ventura Coastline and its
15 tributary streams, as well as associated water bodies and coastal resources, by
16 degrading water quality, harming aquatic and aquatic-dependent life, and threatening
17 human health and welfare.
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21 **B. The Receiving Waters**
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23 96. WISHTOYO alleges based on information and belief that discharges
24 from the ARCTURUS Facility drain from the rear of the Facility and from McWane
25 Blvd. directly into the Ormond Beach Wetlands and from there into Oxnard Drain #
26 3, the Ormond Beach Wetlands Lagoon, Mugu Lagoon, the Ventura Coastline, and
27 ultimately the Pacific Ocean.
28

1 97. Ormond Beach is a 1,500-acre area composed of a coastal ecosystem,
2 beaches, sand dunes, wetlands, streams, the Chumash Native American villages of
3 Wenemu, Kanaputeqnon, and Kasunalmu, and some agricultural and industrial land
4 uses. A two mile- long beach, sand dune, and wetlands ecosystem (“Ormond Beach
5 Wetlands Ecosystem”) extends from Port Hueneme, through Oxnard and the Ormond
6 Beach Lagoon, to the northwestern boundary of Pt. Mugu Naval Air Station, which
7 encompasses Mugu Lagoon. Although much of the wetlands have been drained,
8 filled and degraded over the past century, the Ormond Beach Wetlands are one of the
9 few areas in southern California with an intact dune transition zone-marsh system.
10 The Ormond Beach Wetlands ecosystem hosts over 200 migratory bird species and
11 more shorebird species are known to use Ormond Beach wetlands than any other site
12 in Ventura County. In addition, the Ormond Beach Wetlands are home to 8 federal
13 and state listed endangered and threatened species under the Federal Endangered
14 Species Act (“ESA”) and California Endangered Species Act (“CESA”)³ including
15 the Tidewater Goby, Western Snowy Plover, California Least Tern, California Brown
16 Pelican, American Peregrine Falcon, Light-footed Clapper Rail, Least Bell’s Vireo,
17 and Belding’s Savannah; 16 state and federal species of special concern; ospreys;
18 kites; great blue herons; egrets; kestrels; sandpipers; white tundra swans that stop by
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28 ³ Federal Endangered Species Act, 7 U.S.C. § 136, 16 U.S.C. 1531 et.seq.; California Endangered Species Act, California Fish & Game Code §§2050, et.seq.

1 on their way south from Alaska; and 40 state and federal special status plant species.⁴

2 98. Oxnard Drain # 3 runs through the Mugu Lagoon and Ormond Beach
3 Wetlands watersheds, before flowing into Mugu Lagoon and ultimately the Pacific
4 Ocean. The drain is 3.3 miles long and typically about 50 feet wide. Freshwater
5 enters Oxnard Drain # 3 through a system of agricultural drainage canals and
6 seasonal ponds in a duck club. Oxnard Drain # 3 also experiences muted tidal action
7 from leaking tide gates connected to Mugu Lagoon.⁵ Almost all of Oxnard Drain # 3
8 lies within the Point Mugu Naval Air Base. Though on naval property, most of the
9 land surrounding Oxnard Drain # 3 is undeveloped wetlands which provide habitat
10 for a great diversity of wildlife. Over 200 migratory bird species utilize the Ormond
11 Beach area, and more shorebird species are known to use Ormond Beach than any
12 other site in Ventura County.⁶ Historically, a coastal drainage canal parallel to the
13 shoreline carried surface water from the Oxnard Industrial Drain, J Street Drain, and
14 Hueneme Drain southward to Mugu Lagoon.⁷ This canal first appears in a 1945 aerial
15 photo, appears to still be operational in the 1951 photo, and appears to have become
16 dilapidated and non-operational by the 1959 photo.⁸ Aerial photographs indicate that
17 the drainage canals continue to be operational.
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25 ⁴ Special-status species are plants and animals that are legally protected under the federal Endangered Species
26 Act, California Endangered Species Act, or other state regulations, and species that are considered
27 sufficiently rare by the scientific community to warrant conservation concern.

28 ⁵ U.S. E.P.A., Region IX. Total Maximum Daily Loads for Pesticides, PCBs and Sediment Toxicity in
Oxnard Drain # 3, pg. 10 (Oct 2011).

⁶ *Id.* citing Ormond Beach Wetlands Restoration Project, 2011

⁷ *Id.*

⁸ *Id.* citing Williams, 1982.

1 99. It is estimated that the wetlands at Ormond Beach once covered
2 approximately 1,100 acres. Today, approximately 250 acres remain, but are degraded
3 in large part from contaminated industrial, municipal, and agricultural storm water
4 runoff and dry weather irrigation discharges; from compaction due to human use and
5 dumping; from metals and radioactive constituents from the U.S. EPA Halaco
6 Superfund Site⁹ adjacent to the Ormond Beach Lagoon; and from hypersalinity due
7 to lack of flushing. For instance, a 2008 U.S. EPA technical analysis of the extent and
8 movement of contamination of the contaminants from the Halaco U.S. EPA Region 9
9 Superfund site indicates that the Halaco site is leaching elevated levels of iron into
10 the Ormond Beach Wetlands surface and groundwater. In addition, a 2006 Ormond
11 Beach Wetlands Restoration Study found that the surface waters of the Ormond
12 Beach Wetlands northwest of the ARCTURUS Facility are impaired for iron, and
13 presence of high levels of iron in the surface waters of the Western Arm of Mugu
14 Lagoon in Oxnard Drain #3 at Arnold Road.

15
16 100. Ormond Beach is considered by wetland experts to be the most
17 important wetland restoration opportunity in southern California. Unlike other coastal
18 wetland restoration projects in southern California, there is room to restore the
19 approximate extent of historic wetlands, and to provide surrounding upland habitat to
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27 ⁹ Technical Memorandum: Preliminary Evaluation of the Sources, Nature, Extent, and Movement of
28 Contamination in in Surface Water and Groundwater; Halaco Site; Oxnard, California; Prepared for U.S.
Environmental Protection Agency Region IX, 75 Hawthorne St., San Francisco, California 94105; Prepared
by CH2M HILL (Dec. 2008).

1 complete the ecosystem and to accommodate sea level rise. The biological
2 significance of this area has been recognized, and its restoration potential endorsed
3 by all of the federal and state resource agencies that participate in the Southern
4 California Wetlands Recovery Project.
5

6 101. The Oxnard and Port Hueneme communities, many public interest local
7 non-profit organizations, and state entities have devoted considerable resources to
8 protect and restore the Ormond Beach Wetlands. The Nature Conservancy and
9 California Coastal Conservancy respectively, with support of the County of Ventura
10 and the City of Oxnard, have acquired significant Ormond Beach Wetlands parcels
11 for conservation and restoration, and are pursuing acquisitions at Ormond Beach with
12 a goal of acquiring at least 900 acres at Ormond Beach to accommodate wetland and
13 other habitat needs. In addition, the local communities surrounding the Ormond
14 Beach wetlands and numerous local grassroot non-profit groups have devoted
15 substantial resources and energy to conduct significant Ormond Beach Wetlands
16 restoration projects and to advocate for their protection and restoration. WISHTOYO
17 Foundation and its Ventura Coastkeeper Program have, and continue to, help with the
18 Ormond Beach restoration effort. In 2003, WISHTOYO conducted a major Phase I
19 and Phase II Ormond Beach Wetlands Clean Up Project in partnership with Oxnard
20 City Corps that resulted in the removal of invasive ice plant and debris such as rusted
21 automobiles, unused piping, and other large, decayed sharp and toxic metal objects
22 that littered the wetlands for decades; conducted a Ormond Beach Cultural Resources
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1 Study for the California Coastal Conservancy's Wetlands Restoration Feasibility
2 Plan; have held numerous Ormond Beach Wetlands and J. Street Drain trash clean up
3 events; have conducted water quality monitoring in the Ormond Beach Wetlands and
4 its tributaries; have submitted its Watershed Monitoring Program's data to the State
5 Water Resources Control Board that document that the Wetlands are impaired for
6 nitrate, pH, trash, and E. Coli and that accordingly support 2012 and 2016 Clean
7 Water Act 303(d) impaired waterbody listings for these constituents; and have
8 actively advocated at local, state, and federal levels for the protection and restoration
9 of the Ormond Beach Wetlands.
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13 102. A critical mass of restored wetlands and associated habitat at Ormond
14 Beach is expected to create a self-sustaining biological system and enough tidal
15 prism and flushing action to maintain health and hydrologic function. Anticipated
16 restoration at Ormond Beach would include expansion of the wetlands to mirror their
17 historic extent; pollutant free wetlands that do not harm or pose threats to humans
18 and aquatic, benthic, plant and avian wildlife; and modifications of wetlands
19 hydrology to restore tidal action and bring back freshwater flows that had formerly
20 drained across the Oxnard Plain to the coastal wetlands. When integrated with the
21 adjoining 900 acres of freshwater wetlands and the 1,500 acres at Mugu Lagoon, the
22 Ormond Beach Wetlands could be the largest coastal wetland in southern California,
23 spanning nine miles of the coast from Point Hueneme to Point Mugu.
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103. The portion of Mugu Lagoon, from Laguna Point east to Point Mugu, is

1 part of the Mugu-Latigo Area of Special Biological Significance ("ASBS") as
 2 designated by the State of California for special ecological protections.¹⁰ The Mugu-
 3 Latigo ASBS is the largest of the mainland ASBS in Southern California, with 24
 4 miles of coastline and 11,842 acres of marine habitat. Mugu Lagoon and its wetlands,
 5 home to the Chumash Native American Village of Muwu, is largely contained within
 6 the Mugu-Latigo ASBS. Mugu Lagoon is one of the key coastal wetlands in the state,
 7 supporting over 60,000 shorebirds each spring, up to 10,000 shorebirds in the winter,
 8 thousands of ducks during duck migration season and the winter, and 18 species of
 9 fish. It is an integral component of the Pacific Flyway, and over 205 avian species
 10 have been reported in the Lagoon, including five avian species listed under the
 11 Federal Endangered Species Act. One of the world's largest populations of Belding's
 12 Savannah Sparrow is found in Mugu Lagoon. Mugu Lagoon is also home to the
 13 farthest-north remaining population of Light-footed Clapper Rail. In addition,
 14 Peregrine Falcon have been observed at Mugu Lagoon, and Mugu Lagoon supports
 15 the largest remaining natural Brown Pelican roosting area in southwestern California.

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10 The State Board under its Resolution No. 74-28, designated certain ASBS in the adoption of water quality control plans for the control of waste discharged to ocean waters. The ASBS are intended to afford special protection to marine life through prohibition of waste discharge within these areas. The concept of "Special Biological Significance" recognizes that certain biological communities, because of their value or fragility, deserve very special protection that consists of preservation and maintenance of natural water quality conditions to practicable extents (from SWRCB's and Regional Boards' Administrative Procedures. Sep. 24, 1970, Section XI. Misc.—Revision 7, (September 1, 1972))

C. Defendants' Specific Violations of Water Quality Standards Including Effluent Limitations, Receiving Water Limitations and Protections for Impaired Water Bodies Including the California Ocean Plan

104. On information and belief, Plaintiff alleges that the Facility has failed and continues to fail to reduce or prevent pollutants associated with industrial activity in storm water discharges through implementation of BMPs that achieve BAT/BCT as required by the Act and Permit.

105. **Effluent Limitations.** The data available to WISHTOYO, as reported to the Regional Board by ARCTURUS, relevant to Facility's violations of the Permit's Effluent Limitation are summarized below at Table 1. Self-monitoring reports under the Permit are deemed "conclusive evidence of an exceedance of a permit limitation." *Sierra Club v Union Oil*, 813 F.2d 1480, 1493 (9th Cir. 1988).

TABLE 1
SAMPLING DATA DEMONSTRATES ONGOING EXCEEDANCES OF EFFLUENT LIMITATIONS FOR MULTIPLE POLLUTANTS

Line	Sample Date	Parameter	Obsrv'd Concentration	EPA Benchmark (* Local Limit)	Applicable NAL	Source City (PW)/ Regional Board 4 (RB)
1	2/2/2012	O&G	33	15 mg/L	15 mg/L	PW
2	2/22/2012	Cu	0.04	0.0332 mg/L	0.0332 mg/L	PW
3	3/22/2012	Cu	0.04	0.0332 mg/L	0.0332 mg/L	PW
4	3/22/2012	O&G	32	15 mg/L	15 mg/L	PW

1	5	4/5/2012	O&G	23	15 mg/L	15 mg/L	PW
2	6	6/8/2012	Cu	0.09	0.0332 mg/L	0.0332 mg/L	PW
3	7	6/8/2012	O&G	50	15 mg/L	15 mg/L	PW
4	8	7/9/2012	O&G	60	15 mg/L	15 mg/L	PW
5	9	8/3/2012	O&G	25	15 mg/L	15 mg/L	PW
6	10	9/26/2012	O&G	53	15 mg/L	15 mg/L	PW
7	11	10/1/2012	O&G	170	15 mg/L	15 mg/L	PW
8	12	10/2/2012	Cu	0.04	0.0332 mg/L	0.0332 mg/L	PW
9	13	10/8/2012	pH	4.13	6-9 SU	n/a	PW
10	14	10/15/2012	O&G	200	15 mg/L	15 mg/L	PW
11	15	10/25/2012	O&G	200	15 mg/L	15 mg/L	PW
12	16	11/15/2012	Cu	0.1	0.0332 mg/L	0.0332 mg/L	PW
13	17	11/15/2012	O&G	70	15 mg/L	15 mg/L	PW
14	18	12/7/2012	O&G	62	15 mg/L	15 mg/L	PW
15	19	1/1/2013	O&G	40	15 mg/L	15 mg/L	PW
16	20	2/4/2013	Cu	0.05	0.0332 mg/L	0.0332 mg/L	PW
17	21	3/8/2013	O&G	22	15 mg/L	15 mg/L	PW
18	22	4/15/2013	pH	9.1	6-9 SU	n/a	PW
19	23	4/22/2013	pH	9.45	6-9 SU	n/a	PW
20	24	4/30/2013	pH	9.3	6-9 SU	n/a	PW
21	25	5/3/2013	Cu	0.04	0.0332 mg/L	0.0332 mg/L	PW
22	26	5/6/2013	pH	9.1	6-9 SU	n/a	PW
23	27	5/6/2013	pH	10.2	*6-10 SU	n/a	PW
24	28	5/7/2013	pH	10.2	*6-10 SU	n/a	PW
25	29	5/29/2013	pH	10.4	*6-10 SU	n/a	PW
26	30	6/7/2013	pH	10.6	*6-10 SU	n/a	PW
27	31	6/10/2013	pH	10.6	*6-10 SU	n/a	PW
28	32	6/11/2013	pH	11.2	*6-10 SU	n/a	PW
	33	8/6/2013	pH	11	*6-10 SU	n/a	PW
	34	8/9/2013	Cu	0.038	0.0332 mg/L	0.0332 mg/L	PW
	35	8/9/2013	O&G	46	15 mg/L	15 mg/L	PW

1	36	8/10/2013	pH	9.2	6-9 SU	n/a	PW
2	37	8/10/2013	pH	11.2	*6-10 SU	n/a	PW
3	38	8/17/2013	pH	10.8	*6-10 SU	n/a	PW
4	39	8/19/2013	pH	10.4	*6-10 SU	n/a	PW
5	40	8/21/2013	pH	10	*6-10 SU	n/a	PW
6	41	8/21/2013	pH	12.2	*6-10 SU	n/a	PW
7	42	8/22/2013	pH	9.1	*6-10 SU	n/a	PW
8	43	8/22/2013	pH	10.2	*6-10 SU	n/a	PW
9	44	8/23/2013	pH	11	*6-10 SU	n/a	PW
10	45	8/23/2013	pH	12.5	*6-10 SU	n/a	PW
11	46	8/23/2013	pH	12.6	*6-10 SU	n/a	PW
12	47	8/26/2013	pH	9.7	6-9 SU	n/a	PW
13	48	8/26/2013	pH	11.2	*6-10 SU	n/a	PW
14	49	8/27/2013	pH	9.7	6-9 SU	n/a	PW
15	50	8/27/2013	pH	11.2	*6-10 SU	n/a	PW
16	51	8/28/2013	pH	9.8	6-9 SU	n/a	PW
17	52	8/28/2013	pH	10.8	*6-10 SU	n/a	PW
18	53	8/29/2013	pH	9.8	6-9 SU	n/a	PW
19	54	8/29/2013	pH	10.8	*6-10 SU	n/a	PW
20	55	8/30/2013	pH	9.2	6-9 SU	n/a	PW
21	56	9/3/2013	pH	9.4	6-9 SU	n/a	PW
22	57	9/3/2013	pH	10.4	*6-10 SU	n/a	PW
23	58	9/4/2013	pH	9.3	6-9 SU	n/a	PW
24	59	9/4/2013	pH	10.2	*6-10 SU	n/a	PW
25	60	9/5/2013	pH	10.05	*6-10 SU	n/a	PW
26	61	9/5/2013	pH	10.6	*6-10 SU	n/a	PW
27	62	9/6/2013	pH	10.6	*6-10 SU	n/a	PW
28	63	9/6/2013	pH	11.2	*6-10 SU	n/a	PW
	64	9/9/2013	pH	9.9	6-9 SU	n/a	PW
	65	9/9/2013	pH	10.4	*6-10 SU	n/a	PW
	66	9/10/2013	pH	9.4	6-9 SU	n/a	PW
	67	9/10/2013	pH	10.6	*6-10 SU	n/a	PW
	68	9/10/2013	pH	11.6	*6-10 SU	n/a	PW
	69	9/11/2013	pH	10.7	*6-10 SU	n/a	PW
	70	9/11/2013	pH	11.4	*6-10 SU	n/a	PW

1	71	9/12/2013	pH	10.9	*6-10 SU	n/a	PW
2	72	9/12/2013	pH	10.4	*6-10 SU	n/a	PW
3	73	9/12/2013	pH	11.4	*6-10 SU	n/a	PW
4	74	9/13/2013	pH	11.1	*6-10 SU	n/a	PW
5	75	9/13/2013	pH	10.6	*6-10 SU	n/a	PW
6	76	9/13/2013	pH	11.6	*6-10 SU	n/a	PW
7	77	9/16/2013	pH	10.05	*6-10 SU	n/a	PW
8	78	9/16/2013	pH	10.5	*6-10 SU	n/a	PW
9	79	9/17/2013	pH	10.6	*6-10 SU	n/a	PW
10	80	9/17/2013	pH	11.2	*6-10 SU	n/a	PW
11	81	9/19/2013	pH	10.8	*6-10 SU	n/a	PW
12	82	9/21/2013	pH	11.2	*6-10 SU	n/a	PW
13	83	9/23/2013	pH	9.2	*6-10 SU	n/a	PW
14	84	9/23/2013	pH	11.6	*6-10 SU	n/a	PW
15	85	9/25/2013	pH	10.4	*6-10 SU	n/a	PW
16	86	9/26/2013	pH	10.4	*6-10 SU	n/a	PW
17	88	10/1/2013	pH	11	*6-10 SU	n/a	PW
18	89	10/3/2013	pH	10.4	*6-10 SU	n/a	PW
19	90	10/4/2013	pH	10.4	*6-10 SU	n/a	PW
20	91	10/8/2013	pH	10.8	*6-10 SU	n/a	PW
21	92	10/11/2013	pH	9.3	6-9 SU	n/a	PW
22	93	10/11/2013	pH	11.6	*6-10 SU	n/a	PW
23	94	10/16/2013	pH	9.2	6-9 SU	n/a	PW
24	95	10/16/2013	pH	10.8	*6-10 SU	n/a	PW
25	96	10/17/2013	pH	10.6	*6-10 SU	n/a	PW
26	97	10/17/2013	pH	5.2	6-9 SU	n/a	PW
27	98	10/21/2013	pH	10.3	*6-10 SU	n/a	PW
28	99	10/21/2013	pH	11.8	*6-10 SU	n/a	PW
	100	11/15/2013	Cu	0.06	0.0332 mg/L	0.0332 mg/L	PW
	101	1/7/2014	Cu	0.06	0.0332 mg/L	0.0332 mg/L	PW
	103	1/31/2014	pH	10.4	*6-10 SU	n/a	PW
	104	2/3/2014	pH	9.35	6-9 SU	n/a	PW
	105	2/4/2014	pH	9.38	6-9 SU	n/a	PW
	106	2/4/2014	pH	10.29 - 10.4	*6-10 SU	n/a	PW

1	107	2/5/2014	pH	9.245	6-9 SU	n/a	PW
2	108	2/5/2014	pH	10.29 - 10.36	*6-10 SU	n/a	PW
3	109	2/6/2014	pH	9.04	6-9 SU	n/a	PW
4	110	2/6/2014	pH	10.08 - 10.1	*6-10 SU	n/a	PW
5	111	2/11/2014	pH	9.26	6-9 SU	n/a	PW
6	112	2/11/2014	pH	10.2	*6-10 SU	n/a	PW
7	113	2/19/2014	Cu	0.21	0.0332 mg/L	0.0332 mg/L	PW
8	114	2/19/2014	Zn	.23**	0.117 mg/L	0.26 mg/L	PW
9	115	2/20/2014	O&G	21	15 mg/L	15 mg/L	PW
10	116	2/20/2014	pH	9.05 - 9.7	6-9 SU	n/a	PW
11	118	3/7/2014	pH	10.2	*6-10 SU	n/a	PW
12	119	3/24/2014	pH	10.2	*6-10 SU	n/a	PW
13	120	3/25/2014	pH	10.3	*6-10 SU	n/a	PW
14	121	5/13/2014	Cu	0.04	0.0332 mg/L	0.0332 mg/L	PW
15	122	5/13/2014	O&G	50	15 mg/L	15 mg/L	PW
16	123	6/16/2014	O&G	27	15 mg/L	15 mg/L	PW
17	124	8/23/2014	pH	12.6	*6-10 SU	n/a	PW
18	125	8/26/2014	pH	9.1	6-9 SU	n/a	PW
19	126	8/27/2014	pH	9.15	6-9 SU	n/a	PW
20	127	8/28/2014	pH	9.15	6-9 SU	n/a	PW
21	128	9/11/2014	O&G	19	15 mg/L	15 mg/L	PW
22	129	12/2/2014	Fe	2.97	1.0 mg/L	1.0 mg/L	RB
23	130	12/2/2014	Fe	2.07	1.0 mg/L	1.0 mg/L	RB
24	131	12/2/2014	Fe	2.17	1.0 mg/L	1.0 mg/L	RB
25	132	12/2/2014	SC	269	200 umhos/cm	200 umhos/cm	RB
26	133	12/2/2014	TSS	523	100 mg/L	100 mg/L	RB
27	134	12/4/2014	pH	10.4	6-10 SU	n/a	PW
28	135	12/10/2014	pH	10.3	6-10 SU	n/a	PW
	136	12/17/2014	pH	10.1	6-10 SU	n/a	PW
	137	12/19/2014	pH	10.8	6-10 SU	n/a	PW
	138	1/16/2015	O&G	30	15 mg/L	15 mg/L	PW
	139	3/12/2015	O&G	23	15 mg/L	15 mg/L	PW

1	140	4/7/2015	Fe	19.5	1.0 mg/L	1.0 mg/L	RB
2	141	4/7/2015	Fe	83	1.0 mg/L	1.0 mg/L	RB
3	142	4/7/2015	Fe	44.3	1.0 mg/L	1.0 mg/L	RB
4	143	4/7/2015	Ni	1.15		1.02 mg/L	RB
5	144	4/7/2015	Ni	2.34		1.02 mg/L	RB
6	145	4/7/2015	Ni	1.09		1.02 mg/L	RB
7	146	4/7/2015	SC	1220	200 umhos/cm	200 umhos/cm	RB
8	147	4/7/2015	SC	1220	200 umhos/cm	200 umhos/cm	RB
9	148	4/7/2015	SC	1070	200 umhos/cm	200 umhos/cm	RB
10	149	4/7/2015	TSS	271	100 mg/L	100 mg/L	RB
11	150	4/7/2015	TSS	491	100 mg/L	100 mg/L	RB
12	151	4/15/2015	pH	10.08	*6-10 SU	n/a	PW
13	152	4/16/2015	pH	10.3	*6-10 SU	n/a	PW
14	153	5/13/2015	Cu	0.037	0.0332 mg/L	0.0332 mg/L	PW
15	154	5/13/2015	O&G	29	15 mg/L	15 mg/L	PW
16	155	8/12/2015	O&G	28	15 mg/L	15 mg/L	PW
17	156	9/11/2015	O&G	65	15 mg/L	15 mg/L	PW
18	157	10/19/2015	pH	10.2	*6-10 SU	n/a	PW
19	158	10/20/2015	pH	10.6	*6-10 SU	n/a	PW
20	159	10/21/2015	pH	11	*6-10 SU	n/a	PW
21	160	10/22/2015	pH	10.8	*6-10 SU	n/a	PW
22	161	10/23/2015	pH	10.6	*6-10 SU	n/a	PW
23	162	10/24/2015	pH	10.3	*6-10 SU	n/a	PW
24	163	10/28/2015	pH	10.4	*6-10 SU	n/a	PW
25	164	10/29/2015	pH	10.6	*6-10 SU	n/a	PW
26	165	10/30/2015	pH	10.7	*6-10 SU	n/a	PW
27	166	11/6/2015	Cu	0.035	0.0332 mg/L	0.0332 mg/L	PW
28	167	11/6/2015	O&G	78	15 mg/L	15 mg/L	PW
	168	11/30/2015	Cu	0.15	0.0332 mg/L	0.0332 mg/L	PW
	169	11/30/2015	Zn	0.13	0.117 mg/L	0.26 mg/L	RB

1	170	12/1/2015	O&G	36	15 mg/L	15 mg/L	PW
2	171	1/5/2016	Al	4.62	0.75 mg/L	0.75 mg/L	RB
3	172	1/5/2016	Al	3.47	0.75 mg/L	0.75 mg/L	RB
4	173	1/5/2016	Al	1.41	0.75 mg/L	0.75 mg/L	RB
5	174	1/5/2016	Al	2.15	0.75 mg/L	0.75 mg/L	RB
6	175	1/5/2016	Fe	10.5	1.0 mg/L	1.0 mg/L	RB
7	176	1/5/2016	Fe	6.36	1.0 mg/L	1.0 mg/L	RB
8	177	1/5/2016	Fe	2.51	1.0 mg/L	1.0 mg/L	RB
9	178	1/5/2016	Fe	3.35	1.0 mg/L	1.0 mg/L	RB
10	179	1/5/2016	Zn	3.16	0.117 mg/L	0.26 mg/L	RB
11	180	1/5/2016	Zn	0.524	0.117 mg/L	0.26 mg/L	RB
12	181	1/5/2016	Zn	0.403	0.117 mg/L	0.26 mg/L	RB
13	182	1/5/2016	Zn	0.25	0.117 mg/L	0.26 mg/L	RB
14	183	1/5/2016	TSS	140	100 mg/L	100 mg/L	RB
15	184	1/5/2016	TSS	187	100 mg/L	100 mg/L	RB
16	185	1/5/2016	N+N	1.37	0.68 mg/L	0.68 mg/L	RB
17	186	1/5/2016	N+N	1.21	0.68 mg/L	0.68 mg/L	RB
18	187	1/8/2016	O&G	27	15 mg/L	15 mg/L	PW
19	188	3/1/2016	Cu	0.1	0.0332 mg/L	0.0332 mg/L	PW
20	189	3/1/2016	Zn	0.81	0.117mg/L	0.26 mg/L	RB
21	190	3/11/2016	Al	2.01	0.75 mg/L	0.75 mg/L	RB
22	191	3/11/2016	Al	2.26	0.75 mg/L	0.75 mg/L	RB
23	192	3/11/2016	Al	3.45	0.75 mg/L	0.75 mg/L	RB
24	193	3/11/2016	Al	1.31	0.75 mg/L	0.75 mg/L	RB
25	194	3/11/2016	Fe	4.38	1.0 mg/L	1.0 mg/L	RB
26	195	3/11/2016	Fe	5.05	1.0 mg/L	1.0 mg/L	RB
27	196	3/11/2016	Fe	7.05	1.0 mg/L	1.0 mg/L	RB
28	197	3/11/2016	Fe	2.73	1.0 mg/L	1.0 mg/L	RB
	198	3/11/2016	Zn	0.484	0.117 mg/L	0.26 mg/L	RB
	199	3/11/2016	Zn	0.546	0.117 mg/L	0.26 mg/L	RB

1	200	3/11/2016	Zn	1.15	0.117 mg/L	0.26 mg/L	RB
2	201	3/11/2016	Zn	0.246	0.117 mg/L	0.26 mg/L	RB
3	202	3/11/2016	TSS	152	100 mg/L	100 mg/L	RB
4	203	3/11/2016	N+N	1.05	0.68 mg/L	0.68 mg/L	RB
5	204	3/11/2016	N+N	0.975	0.68 mg/L	0.68 mg/L	RB
6	205	4/15/2016	O&G	47	15 mg/L	15 mg/L	PW
7	206	5/12/2016	O&G	21	15 mg/L	15 mg/L	PW
8	207	5/12/2016	Zn	0.13	0.117mg/L	0.26mg/L	RB
9	208	6/3/2016	O&G	38	15 mg/L	15 mg/L	PW
10	209	7/19/2016	Cu	0.04	0.0332 mg/L	0.0332 mg/L	PW
11	210	7/19/2016	O&G	16	15 mg/L	15 mg/L	PW
12	211	7/19/2016	pH	9.6	6-9 SU	n/a	PW
13	212	7/19/2016	Zn	0.15	0.17 mg/L	0.26 mg/L	PW
14	213	8/12/2016	Cu	0.059	0.0332 mg/L	0.0332 mg/L	PW

106. The results of storm water sample analysis between February 2012 and August 2016 (lines 1-213) show consistent exceedances, and an astounding 213 exceedances, of the EPA benchmark levels, applicable NAL values for various indicator parameters, and local water quality controls including TSS, SC, aluminum, iron, nickel, zinc, and N+N. In numerous cases the Facility has self-reported to the Board exceedances of parameters by orders of magnitude—see e.g. line 133 exceedance of the relevant total suspended solids benchmark by over 500%, line 147 exceedance of the relevant Specific Conductance benchmark by over 600%, line 24 exceedance of the relevant oil & grease benchmark by over 1300%, line 113 exceedance of the relevant Copper benchmark by over 600%, line 171 exceedance of

1 the relevant Aluminum benchmark by 600%, and line 179 exceedance of the zinc
 2 NAL by nearly 2700%, line 141 exceedance of iron by over 4400%, all of which
 3 contribute to the extremely alkaline pH levels seen in line 46 .
 4

5 107. Information available to WISHTOYO, including the sampling data
 6 summarized above in Table 1, demonstrates that the Facility has violated the Permit's
 7 effluent limitations and failed, and continues to fail, to develop or implement BMPs
 8 that achieve compliance with the Act's BAT/BCT mandates.
 9

10 108. Receiving Water Limitation C(2) prohibits storm water discharges and
 11 authorized non-storm water discharges that cause or contribute to an exceedance of
 12 an applicable WQS.¹¹ The 1997 and 2015 Storm Water Permit includes the same
 13 receiving water limitation. See 2015 Permit, Receiving Water Limitation VI.A.
 14 Samples of storm water discharged from the ARCTURUS Facility have
 15 demonstrated exceedances of the Basin Plan's water quality standards for numerous
 16 pollutants (see Table 1). Furthermore, for General Industrial Permit holders, the
 17 Basin Plan sets forth interim wet-weather concentration-based waste load allocations
 18 ("WLAs") that have been enforceable conditions for discharges since January 17,
 19 2012. The WLA for zinc is 0.117 mg/L, identical to the EPA Benchmark value. The
 20 EPA's CTR adopted freshwater numeric water quality standards for zinc of 0.120
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 27 ¹¹ The Basin Plan designates Beneficial Uses for the Receiving Waters. Water quality standards are pollutant
 28 concentration levels determined by the state or federal agencies to be protective of designated Beneficial
 Uses. Discharges above water quality standards contribute to impairment of Receiving Waters' Beneficial
 Uses. Applicable water quality standards include, among others, the CTR, and water quality objectives in the
 Basin Plan.

1 mg/L (Criteria Maximum Concentration – “CMC”). 65 Fed. Reg. 31712 (May 18,
2 2000). Data from Table 1 establishes numerous independent violations of the
3 Permit’s Receiving Water Limitations for zinc. These discharges that contain
4 pollutants in excess of an applicable water quality standard violate Receiving Water
5 Limitation C(2) of the Storm Water Permit and the Clean Water Act, including the
6 EPA’s CTR at 40 C.F.R. § 131.38. *Santa Monica Baykeeper v. Kramer Metals, Inc.*
7 619 F.Supp.2d 914 (C.D. Cal 2009).
8

10 109. Receiving Water Limitation C(1) of the 1997 General Storm Water
11 Permit prohibits storm water discharges and authorized non- storm water discharges
12 to surface water that adversely impact human health or the environment. Storm
13 Water Permit, Receiving Water Limitation C(1). The 2015 Permit includes the same
14 receiving water limitation. See 2015 Permit, Receiving Water Limitation VI. B.
15 Discharges that contain pollutants in concentrations that exceed levels known to
16 adversely impact aquatic species and the environment constitute violations of
17 Receiving Water Limitation C(1) of the 2015 Storm Water Permit, and the Clean
18 Water Act.
19

20 110. For instance, one example of violations of Receiving Water Limitations
21 C(1) of the 1997 General Storm Water Permit and 2015 Storm Water Permit is that
22 the ARCTURUS Facility’s storm water discharges contain elevated concentrations of
23 iron. The impacts from the ARCTURUS Facility’s discharges of iron not only cause
24 or contribute to impacts to the aquatic, avian, and terrestrial life of the Ormond Beach
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1 Wetlands, Mugu Lagoon, the western branch of Mugu Lagoon/ Oxnard Drain #3, the
2 Ormond Beach Lagoon, and the Pacific Ocean, but the humans that catch and or eat
3 fish from theses waterbodies. Samples of storm water discharged from the
4 ARCTURUS Facility from December 2013 through the 2016 rainy season, taken by
5 the ARCTURUS Facility Owners and/or Operators and as reported in the Facility's
6 Annual Reports, have continuously contained iron at concentrations from 1.1
7 milligrams per liter to 83 milligrams per liter, in exceedance of the U.S.
8 Environmental Protection Agency National Recommended Water Quality Criteria for
9 Freshwater Aquatic Life Protection of 1 mg/L. Discharges that contain pollutants in
10 concentrations that exceed levels known to adversely impact aquatic species and the
11 environment constitute violations of Receiving Water Limitation C(1) of the Storm
12 Water Permit and the Clean Water Act. And this discussion concerns only one of the
13 metals present in the Facility's discharges – other metals such as zinc and aluminum
14 present at the levels in the Facility's stormwater discharges have additional toxicity
15 impacts. Sampling from April 7, 2015 demonstrates that the Facility was discharging
16 iron at almost 8300% of the applicable WQS (see Table 1, line 141). Just this
17 example of Iron exceedances demonstrates that the Facility has violated and
18 continues to violate the Permit's Receiving Water Limitations. See 1997 Permit, §
19 C(2); 2015 Permit, § VI.A.

20 111. Discharges of elevated concentrations of pollutants in the Facility's
21 storm water can adversely impact environmental and human health. The Facility

1 discharges storm water that contains chemicals, including zinc, which can be acutely
2 toxic and/or have sub-lethal impacts on humans, wildlife and is likely to adversely
3 affect overall ecosystem health. These harmful discharges from the Facility are
4 violations of the Permit's Receiving Water Limitations. See 1997 Permit, § C(1);
5 2015 Permit, § VI.B. The EPA 303 (d) List of Water Quality Limited Segments lists
6 Mugu Lagoon, Oxnard Drain #3, Ormond Beach and Wetlands, immediately
7 downstream from the Facility's discharge points, as impaired for sediment, sediment
8 toxicity, bacteria, and metals including copper, zinc, mercury, nickel, and pesticides.
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12 112. **The California Ocean Plan.** In the 1970s, the State Board designated
13 thirty-four areas off California's Pacific Coast as ASBS. These areas have been re-
14 designated State Water Quality Protection Areas, but are still referred to as ASBSs.¹²
15
16 The Mugu Lagoon ASBS in Ventura County and Los Angeles County begins at
17 Mugu Lagoon (Laguna Point) and ends at Latigo Point in the City of Malibu in the
18 County of Los Angeles (the "Mugu to Latigo ASBS"). Like all other ASBSs, the
19 Mugu to Latigo ASBS was determined to be a unique area that deserves special
20 protection. For example, Mugu to Latigo ASBS contains five major sub-tidal habitat
21 types, including extensive sub-tidal reefs. Because of the "intrinsic value" and fragile
22 nature of ASBSs, the State Water Resources Control Board has determined that in
23 order to preserve and enhance the Beneficial Use of ASBSs, the water quality
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28 ¹² According to State Water Board Resolution No. 2005-0035, the State Water Quality Protection Areas are protected by the same laws and regulations as ASBSs.

1 objectives in the Ocean Plan shall prohibit the discharge of any pollutants to an
2 ASBS. Specifically, the Ocean Plan states that “[w]aste shall not be discharged to
3 areas designated as being of special biological significance.” Ocean Plan, Section
4 III(E), Section III(I). Discharges of waste near ASBSs are also prohibited. *Id.* Waste
5 is “a discharger’s total discharge, of whatever origin, i.e., gross, not net, discharge.”
6 Appendix I, Ocean Plan. Therefore, the ARCTURUS Facility’s discharges of waste
7 containing pollutants such as iron in any amount into or near the Mugu to Latigo
8 ASBS, or containing iron exceeding the U.S. Environmental Protection Agency
9 National Recommended Water Quality Criteria for Freshwater Aquatic Life
10 Protection for iron of 1 mg/L, violate the Ocean Plan’s waste discharge prohibition.
11 Every day the ARCTURUS Facility discharges storm water, into and near the Mugu
12 to Latigo ASBS, with waste containing pollutants such as iron, the other metals
13 present in ARCTURUS’ discharges, or with waste containing iron exceeding the U.S.
14 Environmental Protection Agency National Recommended Water Quality Criteria for
15 Freshwater Aquatic Life Protection for iron of 1 mg/L, is a separate and distinct
16 violation of the Ocean Plan and California Water Code.

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23 113. These ongoing polluted storm water discharges from the ARCTURUS
24 Facility cause and/or contribute to the impairment of water quality in the Ormond
25 Beach Wetlands, the Ormond Beach Lagoon, Oxnard Drain # 3, Mugu Lagoon, and
26 the Pacific Ocean; are toxic to aquatic life in these waterbodies and to resident and
27 migratory birds that utilize these waterbodies; and adversely affect the environment.
28

1 For example, Mugu Lagoon (Calleguas Creek Reach 1) and Oxnard Drain #3, which
2 is the western most arm of Mugu Lagoon, are listed as impaired for sediment
3 toxicity, and the Ormond Beach Lagoon and Wetlands adjacent to the Facility are
4 contaminated with iron and other metals.
5

6 114. For the Ormond Beach Wetlands, the Ormond Beach Wetlands Lagoon,
7 Oxnard Drain # 3, Mugu Lagoon, and Ventura's Coastal Waters to regain their
8 health, for the Ormond Beach Wetlands and Mugu Lagoon restoration and protection
9 efforts to succeed, and for these waterbodies threatened, endangered, migratory, and
10 resident species, to recover and thrive, illegal contaminated storm water discharges
11 must be eliminated.
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14 **D. Defendants' SWPPP, Monitoring, and Reporting Violations**
15

16 115. **SWPPP Violations.** On information and belief, Plaintiff alleges that
17 since at least March 21, 2012, Defendants did not implement an adequate SWPPP for
18 the Facility that identifies the locations and presence of the source of numerous
19 pollutants such as furnace bricks and debris along with hazardous waste containers
20 that are plainly visible at the site.
21
22

23 116. On information and belief, Plaintiff alleges that since at least March
24 21, 2012, Defendants did not implement an adequate SWPPP for the Facility that
25 adequately describes the BMPs necessary to contain and properly dispose of runoff
26 on the Facility.
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117. On information and belief, Plaintiff alleges that since at least March 21,

1 2012, Defendants did not implement an adequate SWPPP for the Facility that
2 contains BMPs sufficient to 1.) achieve BAT/BCT and 2.) that prevent polluted
3 discharges from the Facility from impairing receiving waters and violating the
4 General Permit's Effluent Limitations and Receiving Water Limitations.
5

6 118. Even after Regional Board Enforcement Actions on 4/17/02, 7/24/03,
7 9/10/04, and 10/17/05; the EPA Inspection Notice on 2/11/15; and the City of Oxnard
8 Violation Notices on 9/3/13, 1/6/14, 5/27/14, 2/10/15, and 12/1/15 alerted
9 ARCTURUS of non-compliance with federal, state, and local water quality
10 protections, the Facility continued to fail to implement adequate pollution prevention
11 best management practices and have continued to have subsequent numerous and
12 severe water quality exceedances as a result. (*see* ARCTURUS correspondence to
13 City of Oxnard Water Resource Division on 11/13/12, 7/15/13, 9/12/13, 10/12/13,
14 11/11/13, 2/24/14, and 11/18/15 and lab reports provided to the City of Oxnard cited
15 in Table 1 from sampling conducted on 3/17/16, 5/6/16, 8/29/16, and 9/2/16.)
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20 119. Information available to Plaintiff indicates that Defendants have not
21 fulfilled the requirements set forth in the General Permit for discharges from the
22 Facility due to the continued discharge of contaminated storm water. Plaintiff alleges
23 that since at least March 21, 2012, Defendants have not implemented BAT and BCT
24 at the Facility for discharges of TSS, iron, aluminum, copper, zinc, nitrate, oil &
25 grease and other pollutants. As of the date of this Complaint, the Facility has not
26 implemented BAT and BCT that are decreasing contaminant levels in compliance
27
28

1 with water quality standards.

2 120. **Monitoring Violations.** WISHTOYO's review of ARCTURUS'
3 monitoring data indicates that the Facility has failed to submit an Annual Report with
4 water quality sampling in 2011-2012; failed to sample in 2012-2013 and 2013-2014
5 despite numerous qualifying rain events as set forth in Exhibit A hereto; failed to
6 analyze for specific conductance since the 2014-15 wet season; and failed to analyze
7 for any of the Table D/Table 1 parameters in storm water events prior to the 2015-16
8 wet season. These failures are especially concerning given that the area surrounding
9 the Facility contains the Ormond Beach Wetlands, Ventura's coast, Mugu Lagoon,
10 and an Area of Special Biological Significance, and considering the water quality
11 impairments in the waters.
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16 121. **Reporting Violations.** On information and belief, Plaintiff further
17 alleges that during 2012-2013 reporting years, ARCTURUS did not report discharge
18 data from each discharge points at the Facility for all required parameters or explain
19 in the Annual Report why samples were not reported to the Regional Board.
20 WISHTOYO has copies of this data, with excess levels of oil & grease, received
21 from the City of Oxnard Public Works. Reporting to Public Works, however, does
22 not meet legal reporting requirements pursuant to the permits. *See* 1997 Permit, § C
23 (11)(d). *See* 2015 Permit, §§ XII, XVI (A).
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27 122. Information available to WISHTOYO indicates that ARCTURUS has
28 submitted incomplete and/or incorrect Annual Reports that fail to comply with the

1 General Industrial Permit. In many instances, ARCTURUS only reported
2 exceedances to local authorities, not the Regional Board as required in the Permit. As
3 such, ARCTURUS is in daily violation of the Permit, and every day the Facility
4 operates without reporting as required by the Permit is a separate and distinct
5 violation of the Permit and Section 301(a) of the Act. 33 U.S.C. §1311(a).
6 ARCTURUS has been in daily and continuous violation of the Permit's reporting
7 requirements every day since at least March 21, 2012. These violations are ongoing.
8 WISHTOYO will include additional violations when information becomes available,
9 including specifically violations of the 2015 Permit reporting requirements. See
10 2015 Permit, §§ XII, XVI.
11

12 123. In addition, the facility operator must report any noncompliance with
13 the Storm Water Permit at the time that the Annual Report is submitted, including 1)
14 a description of the noncompliance and its cause, 2) the period of noncompliance, 3)
15 if the noncompliance has not been corrected, the anticipated time it is expected to
16 continue, and 4) steps taken or planned to reduce and prevent recurrence of the
17 noncompliance. See 1997 Permit, § C(11)(d). ARCTURUS has failed, and
18 continues to fail, to report non-compliance as required.
19

20 124. Plaintiff alleges that since at least March 21, 2012, ARCTURUS did not
21 submit compliant annual reports that were signed and certified by the appropriate
22 corporate officer, outlining the Facility's storm water controls and accurately
23 certifying compliance with the General Permit. Defendant has failed and continues to
24

1 fail to submit Annual Reports that comply with these reporting requirements. For
 2 example, in each annual report since the filing of the 2011-2012 reporting year,
 3 ARCTURUS certified that: (i) a complete Annual Comprehensive Site Compliance
 4 Evaluation was done pursuant to Section A(9) of the Storm Water Permit; (ii) the
 5 SWPPP's BMPs address existing potential pollutant sources and additional BMPs are
 6 not needed; and (iii) the SWPPP complies with the General Industrial Permit, or will
 7 otherwise be revised to achieve compliance. However, information available to
 8 WISHTOYO indicates that these certifications are erroneous. For example, as
 9 discussed above, samples collected from the Facility contain concentrations of
 10 pollutants above EPA benchmarks, applicable NALs, and established WQS levels and
 11 therefore demonstrate that the SWPPP's BMPs do not adequately address existing
 12 potential pollutant sources. ARCTURUS has failed, and continues to fail, to report
 13 non-compliance as required.

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 19 125. Plaintiff is informed and believes, and thereupon alleges, that all of the
 20 violations alleged in this Complaint are ongoing and continuing.

21 CLAIMS FOR RELIEF

22 FIRST CAUSE OF ACTION

23 **Defendants' Discharges of Contaminated Storm Water in Violation of Permit**
 24 **Effluent Limitations and the Act**
 25 **(33 U.S.C. §§ 1311, 1342, 1365(a), and 1365(f))**

26 126. Plaintiff re-alleges and incorporates all of the preceding paragraphs as if
 27 fully set forth herein.
 28

1 127. WISHTOYO is informed and believes, and thereon alleges, that
2 Defendants failed and continue to fail to reduce or prevent pollutants associated with
3 industrial activities at the Facility from discharging from the Facility through
4 implementation of BMPs that achieve BAT/BCT.
5

6 128. WISHTOYO is informed and believes, and thereon alleges, that
7 discharges of storm water containing levels of pollutants that do not achieve
8 compliance with BAT/BCT standards from the Facility occur every time storm water
9 discharges from the Facility. Defendants' failure to develop and/or implement BMPs
10 that achieve the pollutant discharge reductions attainable via BAT/BCT at the
11 Facility is a violation of the Storm Water Permit and the Act. *See* 1997 Permit,
12 Effluent Limitation B(3); *see also* 2015 Permit, Section I(D) (Finding 32), Section
13 V(A); *see also* 33 U.S.C. § 1311(b).
14
15
16

17 129. Defendants violate and will continue to violate the Permit's Effluent
18 Limitations each and every time storm water containing levels of pollutants that do
19 not achieve BAT/BCT standards discharges from the Facility.
20

21 130. Each and every violation of the Permit's Effluent limitations is a separate
22 and distinct violation of Section 301(a) of the Act, 33 U.S.C. § 1311(a).
23

24 131. Defendants' violations of the Permit's Effluent Limitations and the Act
25 are ongoing and continuous.
26

27 132. By committing the acts and omissions alleged above, ARCUTURUS is
28 subject to an assessment of civil penalties for each and every violation of the Act

1 occurring from March 21, 2012 to the present, pursuant to sections 309(d) and 505 of
2 the Act, 33 U.S.C. §§ 1319(d), 1365, and 40 C.F.R. § 19.4.

3 133. An action for injunctive relief is authorized by Act section 505(a),
4 33 U.S.C. § 1365(a). Continuing commission of the acts and omissions alleged above
5 would irreparably harm Plaintiff and the citizens of the State of California, for which
6 harm WISHTOYO has no plain, speedy, or adequate remedy at law.
7

8 134. An action for declaratory relief is authorized by 28 U.S.C. § 2201(a)
9 because an actual controversy exists as to the rights and other legal relations of the
10 Parties.
11

12 WHEREFORE, Plaintiff prays for judgment against Defendants as set forth
13 hereafter.
14

15
16 **SECOND CAUSE OF ACTION**
17 **Defendants' Discharges of Contaminated Storm Water in Violation**
18 **of the Permit's Receiving Water Limitations and the Act**
19 **(33 U.S.C. §§ 1311(a), 1342, 1365(a), and 1365(f))**

20 135. Plaintiff re-alleges and incorporates all of the preceding paragraphs as if
21 fully set forth herein.

22 136. WISHTOYO is informed and believes, and thereon alleges, that
23 discharges of storm water containing levels of pollutants that adversely impact
24 human health and/or the environment from the Facility occur each time storm water
25 discharges from the Facility.
26

27 137. WISHTOYO is informed and believes, and thereon alleges, that storm
28 water containing levels of pollutants that cause or contribute to exceedances of water

1 quality standards has discharged and continues to discharge from the Facility each
2 time stormwater discharges from the Facility.

3 138. Plaintiff is informed and believes, and thereupon alleges, that since at
4 least March 21, 2012, Defendants have discharged polluted storm water from the
5 Facility causing or contributing to the violation of the applicable WQS and that
6 adversely impact human health or the environment in violation of the Receiving Water
7 Limitations of the General Permit.
8

9
10 139. Every day, since at least March 21, 2012, that Defendants have
11 discharged discharge polluted storm water from the Facility in violation of the
12 Receiving Water Limitations of the General Permit is a separate and distinct violation
13 of Section 301(a) of the Act, 33 U.S.C. § 1311(a).
14
15

16 140. Defendants' violations of the Permit's Receiving Water Limitations and
17 the Act are ongoing and continuous.
18

19 141. Each and every violation of the Storm Water Permit Receiving Water
20 Limitations is a separate and distinct violation of section 301(a) of the Act, 33 U.S.C.
21 § 1311(a).
22

23 142. By committing the acts and omissions alleged above, ARCTURUS is
24 subject to an assessment of civil penalties for each and every violation of the Act
25 occurring from March 21, 2012 to the present, pursuant to sections 309(d) and 505 of
26 the Act, 33 U.S.C. §§ 1319(d), 1365, and 40 C.F.R. § 19.4.
27

28 143. An action for injunctive relief is authorized by Act section 505(a),

1 33 U.S.C. § 1365(a). Continuing commission of the acts and omissions alleged above
2 would irreparably harm Plaintiff and the citizens of the State of California, for which
3 WISHTOYO has no plain, speedy, or adequate remedy at law.
4

5 144. An action for declaratory relief is authorized by 28 U.S.C. § 2201(a)
6 because an actual controversy exists as to the rights and other legal relations of the
7 Parties.
8

9 WHEREFORE, Plaintiff prays for judgment against Defendants as set forth
10 hereafter.
11

12 **THIRD CAUSE OF ACTION**
13 **Defendants' Failure to Prepare, Implement, Review, and Update**
14 **an Adequate Storm Water Pollution Prevention Plan**
15 **(Violations of Permit Conditions and the Act, 33 U.S.C. §§ 1311, 1342)**

16 145. Plaintiff re-alleges and incorporates all of the preceding paragraphs as if
17 fully set forth herein.
18

19 146. Defendants have not developed and implemented an adequate SWPPP
20 for the Facility. Defendants have been in violation of the SWPPP requirements every
21 day since March 21, 2012.
22

23 147. These violations continue each day that an adequate SWPPP for the
24 Facility is not adequately developed, does not contain the information the General
25 Permit requires, and is not fully implemented.
26

27 148. Each day since March 21, 2012, that Defendants do not develop,
28 implement and update an adequate SWPPP for the Facility is a separate and distinct
violation of the General Permit and Section 301(a) of the Act, 33 U.S.C. § 1311(a).

1 155. Each day since March 21, 2012, that Defendants did not develop and
2 implement an adequate monitoring and reporting program for the Facility in violation
3 of the General Permit is a separate and distinct violation of the General Permit and
4 Section 301(a) of the Act, 33 U.S.C. § 1311(a).
5

6 156. Defendants' violations of the General Permit's monitoring and reporting
7 requirements, and the Act, are ongoing and continuous.
8

9 157. By committing the acts and omissions alleged above, ARCTURUS is
10 subject to an assessment of civil penalties for each and every violation of the Act
11 occurring from March 21, 2012 to the present, pursuant to sections 309(d) and 505 of
12 the Act, 33 U.S.C. §§ 1319(d), 1365, and 40 C.F.R. § 19.4.
13

14 158. An action for injunctive relief is authorized by Act section 505(a),
15 33 U.S.C. § 1365(a). Continuing commission of the acts and omissions alleged above
16 would irreparably harm Plaintiff and the citizens of the State of California, for which
17 harm WISHTOYO has no plain, speedy, or adequate remedy at law.
18

19 159. An action for declaratory relief is authorized by 28 U.S.C. § 2201(a)
20 because an actual controversy exists as to the rights and other legal relations of the
21 Parties.
22

23 WHEREFORE, Plaintiff prays for judgment against Defendants as set forth
24 hereafter.
25
26
27
28

FIFTH CAUSE OF ACTION
Defendants' Failure to Accurately Certify Compliance in Annual Reports in
Violation of the Permit and the Act
(33 U.S.C. §§ 1311, 1342, 1365(a) and 1365(f))

160. Plaintiff re-alleges and incorporates all of the preceding paragraphs as if fully set forth herein.

161. Defendants have not accurately certified compliance with the General Permit in each of the annual reports submitted to the Regional Board since at least March 21, 2012.

162. Each day since at least March 21, 2012, that Defendants do not accurately certify compliance with the General Permit is a separate and distinct violation of the General Permit and Section 301(a) of the Act, 33 U.S.C. § 1311(a). Defendants continue to be in violation of the General Permit's certification requirement each day they maintain an inaccurate certification of its compliance with the General Permit.

163. Defendants' violations of the General Permit's compliance certification requirements, and the Act, are ongoing and continuous.

164. By committing the acts and omissions alleged above, ARCTURUS is subject to an assessment of civil penalties for each and every violation of the CWA occurring from March 21, 2012 to the present, pursuant to sections 309(d) and 505 of the Act, 33 U.S.C. §§ 1319(d), 1365, and 40 C.F.R. § 19.4.

165. An action for injunctive relief is authorized by Act section 505(a), 33 U.S.C. § 1365(a). Continuing commission of the acts and omissions alleged above

1 would irreparably harm Plaintiff and the citizens of the State of California, for which
2 harm WISHTOYO has no plain, speedy, or adequate remedy at law.

3 166. An action for declaratory relief is authorized by 28 U.S.C. § 2201(a)
4 because an actual controversy exists as to the rights and other legal relations of the
5 Parties.
6

7 WHEREFORE, Plaintiff prays for judgment against Defendants as set forth
8 hereafter.
9

10 **RELIEF REQUESTED**

11 Wherefore, Plaintiff respectfully requests that this Court grant the following
12 relief:
13

14 a. Declare Defendant(s) to have violated and to be in violation of the Act
15 as alleged herein;
16

17 b. Enjoin Defendant(s) from discharging polluted storm water from the
18 Facility unless authorized by the Permit;
19

20 c. Enjoin Defendant(s) from further violating the substantive and
21 procedural requirements of the Permit;
22

23 d. Order Defendant(s) to immediately implement storm water pollution
24 control technologies and measures that are equivalent to BAT/BCT and prevent
25 pollutants in the Facility's storm water from contributing to violations of any water
26 quality standards;
27

28 e. Order Defendant(s) to comply with the Permit's monitoring and

1 reporting requirements, including ordering supplemental monitoring to compensate for
2 past monitoring violations;

3 f. Order Defendant(s) to prepare a SWPPP consistent with the Permit's
4 requirements and implement procedures to regularly review and update the SWPPP;

5 g. Order Defendant(s) to provide the Regional Board and State Water
6 Resources Control Board with reports documenting the quality and quantity of their
7 discharges to waters of the United States and their efforts to comply with the Act and
8 the Court's orders;

9 h. Order Defendant(s) to provide the Regional Board and State Water
10 Resources Control Board General Permit compliance certifications as required by the
11 General Permit;

12 i. Order Defendant(s) to pay civil penalties of up to \$37,500 per day per
13 violation for each violation of the Act since March 21, 2012, up to and including
14 November 2, 2015, and up to \$51,570 for violations occurring after November 2, 2015
15 pursuant to Sections 309(d) and 505(a) of the Act, 33 U.S.C. §§ 1319(d), 1365(a) and
16 40 C.F.R. §§ 19.1 - 19.4;

17 j. Order Defendant(s) to take appropriate actions to restore the quality of
18 waters impaired or adversely affected by their activities;

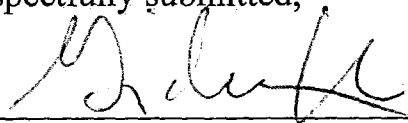
19 k. Award Plaintiff's costs (including reasonable investigative, attorney,
20 witness, compliance oversight, and consultant fees) as authorized by the Act, 33 U.S.C.
21 § 1365(d); and,
22

1 1. Award any such other and further relief, as this Court may deem
2 appropriate.
3

4
5 Dated: 3/7/17, 2017

Respectfully submitted,

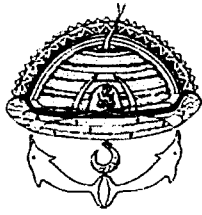
6
7 By:



Gideon Kracov

Attorneys for Plaintiff

EXHIBIT A



WISHTOYO
CHUMASH FOUNDATION



January 17, 2017

VIA CERTIFIED MAIL RETURN RECEIPT REQUESTED

Mark Donegan, Chairman and CEO
Precision Castparts Corporation
4650 SW MacAdam Ave., Ste. 300
Portland, OR 97239

Shawn Hagel, Executive Vice President & CFO
Carlton Forge Works & Precision Castparts Corporation
4650 SW MacAdam Ave., Ste. 300
Portland, OR 97239

Ruth Beyer, Director
Precision Castparts Corporation
4650 SW MacAdam Ave., Ste. 300
Portland, OR 97239

Ken Buck, CEO & Director
Carlton Forge Works
25201 Chagrin Blvd., Ste. 290
Beachwood, Ohio 44122

Armando Batista, Facility Operator & Environmental Manager
Arcturus Manufacturing Corporation
6001 Arcturus Ave.
Oxnard, CA 93033

Warren Buffett, Chairman and CEO
Berkshire Hathaway Inc.
3555 Farnam Street
Omaha, Nebraska 68131

Registered Agent for Service of Process: Arcturus Manufacturing Corporation
National Registered Agents, Inc.
818 W. Seventh St., Ste. 930
Los Angeles, CA 90017

Re: Notice of Violation and Intent to File Suit Under the Federal Water Pollution Control Act

To Whom It May Concern:

I am writing on behalf of Wishtoyo Foundation and its Ventura Coastkeeper Program (collectively "Wishtoyo"), with regard to violations of the Clean Water Act¹ and the State of California's Storm Water Permit² occurring at Arcturus Manufacturing Corporation (the "Arcturus Facility" or the "Facility") located at 6001 Arcturus Ave. Oxnard, CA 93033.

The Arcturus Facility is owned or operated by Carlton Forge Works, a company of Precision Castparts Corporation, recently acquired by Berkshire Hathaway, Inc. The responsible Owner (s) and/or Operator(s) of the Facility include Mark Donegan, Shawn Hagel, Ruth Beyer, Ken Buck, Armando Bautista and Warren Buffett. The individuals and entities are collectively referred to herein as "Arcturus."

Section 505 of the Clean Water Act allows citizens to bring suit in federal court against facilities alleged to be in violation of the Act and/or related permits. Section 505(b) of the Act, 33 U.S.C. § 1365(b), requires that sixty (60) days prior to the initiation of a civil action under Section 505(a) of the Act, 33 U.S.C. § 1365(a), a citizen must give notice of its intention to file suit. Notice must be given to the alleged violator, the Administrator of the United States Environmental Protection Agency ("EPA"), the Regional Administrator of EPA, the Executive Officer of the water pollution control agency in the State in which the alleged violations occur, and, if the violator is a corporation, the registered agent of the corporation. *See* 40 C.F.R. § 135.2(a)(1).

This letter ("Notice Letter") constitutes formal notice to the Facility and Arcturus, pursuant to the Act, 33 U.S.C. §§ 1365(a) and (b), of Wishtoyo's intent to file a civil action against Arcturus for its violations of Sections 301 and 402 of the Act, 33 U.S.C. §§ 1311, 1342, and California's General Industrial Storm Water Permit, National Pollution Discharge Elimination System ("NPDES") General Permit No. CAS000001, Water Quality Order No. 97-03-DWQ ("1997 Permit"), as superseded by Order No. 2015-0057-DWQ ("2015 Permit").³ As explained below, the 2015 Permit includes the same fundamental requirements and implements the same statutory mandates as the 1997 Permit. Wishtoyo may herein refer to the 1997 Permit and the 2015 Permit interchangeably as the "Storm Water Permit" or "General Industrial Permit" or "Permit."

The purpose of this letter is to put the Owners and/or Operators of the Arcturus Facility on notice of their procedural and substantive violations of the Storm Water Permit, including but not limited to the discharges of polluted storm water and dry weather runoff from the Arcturus Facility into local waterways. The Facility's unlawful discharges of polluted storm water adversely affect the areas and waters in, tributary to, and surrounding Oxnard Drain # 3, the Ormond Beach Wetlands, Mugu Lagoon, and or Ventura County's Coast, and endanger the health and welfare of individuals and communities throughout the region. Violations of these requirements constitute ongoing violations for purposes of Clean Water Act enforcement. These violations of the Storm Water Permit are also violations of the Federal Clean Water Act and the

¹ Federal Water Pollution Control Act, 33 U.S.C. §§ 1251 et seq.

² National Pollution Discharge Elimination System General Permit No. CAS000001 [State Water Resources Control Board] Water Quality Order No. 92-12-DWQ, as amended by Order No. 97-03-DWQ.

³ The 1997 Permit was in effect between 1997 and June 30, 2015, and the 2015 Permit went into effect on July 1, 2015.

California Ocean Plan.⁴ The Arcturus Facility and its owners and operators are subject to civil penalties for all violations of the Act occurring since January 17, 2012. Unless the Facility takes the actions necessary to remedy the ongoing violations of the General Industrial Permit and the Act, Coastkeeper intends to file suit in U.S. District Court following expiration of the 60-day notice period, seeking civil penalties, injunctive relief, fees and costs.

I. Background

A. Wishtoyo Foundation and its Ventura Coastkeeper Program

Founded in 1997, the Wishtoyo Foundation (“Wishtoyo”) is a 501(c)(3) non-profit public benefit grassroots corporation organized under the laws of the State of California and located at 11182 Azahar Street, Ventura, CA 93004 and 33904 Pacific Coast Highway, Malibu, CA 90265.. Wishtoyo’s mission is to preserve, protect and restore Chumash culture, the culture and history of coastal communities, cultural resources, and the environment. Wishtoyo has over 700 members consisting of Ventura County’s diverse residents, Chumash Native Americans, and the general public who enjoy and depend upon the recreational, spiritual, cultural, and aesthetic benefits and uses of Mugu Lagoon, the Ormond Beach Wetlands, and Ventura County’s coastal marine waters and environment.

Ventura Coastkeeper is a program of Wishtoyo. Ventura Coastkeeper’s mission is to protect, preserve, and restore the ecological integrity and water quality of Ventura County’s inland water bodies, coastal waters, and watersheds. Ventura Coastkeeper is also a member of the Waterkeeper Alliance, a coalition of nearly 200 member programs on six continents around the world fighting for clean water and strong communities.

As a program of Wishtoyo Foundation, Ventura Coastkeeper also strives to protect, preserve, and restore the natural resources that the Chumash culture, and all cultures, depend upon. The Chumash Peoples, including members of Wishtoyo Foundation, have a long and continuing history of interaction with Mugu Lagoon, the Ormond Beach Wetlands, and Ventura’s coastal waters, with the native wildlife that utilize these waterbodies, and natural Chumash cultural resources of these waterbodies, of which, the Chumash Peoples utilize to maintain their lifeways, for ap (dwelling unit) construction, for Chumash basketry, and for a variety of other cultural purposes, including religious and ceremonial ones.

The unlawful discharge of polluted storm from the Facility into Oxnard Drain # 3 and its tributaries, Ormond Wetlands and its tributaries, Mugu Lagoon and its tributaries, and Ventura’s coastal marine waters and their tributaries impairs the ability of Wishtoyo’s members to use and enjoy these waters. Thus, the interests of Wishtoyo’s members have been, are being, and will continue to be adversely affected by the failure of the Arcturus facility owners and/or operators to comply with the Storm Water Permit and the Clean Water Act.

⁴ California Water Code §§ 13000 et seq.; State Water Resources Control Board, 2005 California Ocean Plan, Water Quality Control Plan for Ocean Waters of California, adopted by the State Water Resources Control Board on January 20, 2005 and April 21, 2005, approved by the Office of Administrative Law on October 12, 2005, and approved by the U. S. Environmental Protection Agency on February 14, 2006.

B. The Arcturus Facility and its Owners and/or Operators

Information available to Wishtoyo indicates that the Facility is owned and/or operated by individuals Mark Donegan, Shawn Hagel, Ken Buck, Roger Cooke and Warren Buffett, who are officers of Berkshire Hathaway, Inc. or Carlton Forge Works, a company of Precision Castparts Corporation ("PCC"). PCC was acquired by Berkshire Hathaway in January 2016, but maintains control over operations and environmental compliance of its subsidiaries. Carlton Forge Works is an Oregon-based company registered with the California Secretary of State as entity number C0420963. PCC is also an Oregon-based corporation registered with the California Secretary of State as entity number C3523979. The company and corporation have a common address, which is 4650 SW MacAdam Ave., Ste. 300 Portland, OR 97239.

Information available to Wishtoyo indicates that the Arcturus Manufacturing Corp., Carlton Forge Works, and the individuals that manage these entities are directed by Precision Castparts Corporation, which is a multinational manufacturer of complex metal components and products, providing investment castings, forgings, fasteners/fastener systems and aerostructures for aerospace and power applications. They also provide seamless pipe for coal-fired, industrial gas turbine and nuclear power plants; downhole casing, clad pipe, fittings and various mill forms in a variety of nickel and steel alloys for severe-service oil and gas environments; castings and forgings for general industrial, armament, medical and other applications; nickel and titanium alloys in all standard mill forms, as well as cobalt alloys, for the aerospace, chemical processing, oil and gas, pollution control and other industries; fasteners for automotive and general industrial markets; specialty alloys for the investment casting and forging industries; heat treating and destructive testing services for the investment cast products and forging industries; refiner plates, screen cylinders and other products for the pulp and paper industry; grinder pumps and affiliated components for low-pressure sewer systems; auxiliary equipment and gas monitoring systems for the power generation industry; and metalworking tools for the fastener market and other applications.

C. Storm Water Pollution Enters the Following Protected Waters: Oxnard Drain # 3 and its tributaries, Ormond Beach Wetlands and its tributaries and lagoon, Mugu Lagoon and its tributaries, and the coastal marine waters along Ventura's coast and their tributaries

With every significant rainfall event, millions of gallons of polluted rainwater, originating from industrial operations such as the Arcturus Facility, pour into Ventura County storm drains and surface waters, and then into the Pacific Ocean. The consensus among agencies and water quality specialists is that storm water pollution accounts for more than half of the total pollution entering the marine, river, estuarine, and wetland environments each year. This discharge of pollutants from industrial facilities in storm water contributes to the impairment of downstream waters and aquatic dependent wildlife, including birds and fish. Specifically, discharges from the Arcturus Facility drain directly into the Oxnard Drain # 3, Ormond Beach Wetlands, Mugu Lagoon, the Ventura Coastline, and ultimately the Pacific Ocean.

1. Oxnard Drain # 3

Oxnard Drain # 3 is located in the Calleguas Creek watershed and largely overlaps with the Mugu Lagoon subwatershed and the Ormond Beach project area. The drain is 3.3 miles long and typically about 50 feet wide. Freshwater enters Oxnard Drain # 3 through a system of agricultural drainage canals and seasonal ponds in a duck club. Oxnard Drain # 3 also experiences muted tidal action from leaking tide gates connected to Mugu Lagoon.⁵

Almost all of Oxnard Drain # 3 lies within the Point Mugu Naval Air Base. Though on naval property, most of the land surrounding Oxnard Drain # 3 is undeveloped wetlands which provide habitat for a great diversity of wildlife. Over 200 migratory bird species utilize the Ormond Beach area, and more shorebird species are known to use Ormond Beach than any other site in Ventura County.⁶

Historically, a coastal drainage canal parallel to the shoreline carried surface water from the Oxnard Industrial Drain, J Street Drain, and Hueneme Drain southward to Mugu Lagoon.⁷ This canal first appears in a 1945 aerial photo, appears to still be operational in the 1951 photo, and appears to have become dilapidated and non-operational by the 1959 photo.⁸ Aerial photographs indicate that the drainage canals continue to be operational.

2. Ormond Beach Wetlands

Ormond Beach is a 1,500-acre area composed of a coastal ecosystem, beaches, sand dunes, wetlands, streams, the Chumash Native American villages of Wenemu, Kanaputeqnon, and Kasunalmu, and some agricultural and industrial land uses. A two mile- long beach, sand dune, and wetlands ecosystem ("Ormond Beach Wetlands Ecosystem") extends from Port Hueneme, through Oxnard and the Ormond Beach Lagoon, to the northwestern boundary of Pt. Mugu Naval Air Station, which encompasses Mugu Lagoon. Although much of the wetlands have been drained, filled and degraded over the past century, the Ormond Beach Wetlands are one of the few areas in southern California with an intact dune transition zone-marsh system. The Ormond Beach Wetlands ecosystem hosts over 200 migratory bird species and more shorebird species are known to use Ormond Beach wetlands than any other site in Ventura County. In addition, the Ormond Beach Wetlands are home to 8 federal and state listed endangered and threatened species under the Federal Endangered Species Act ("ESA") and California Endangered Species Act ("CESA")⁹ including the Tidewater Goby, Western Snowy Plover, California Least Tern, California Brown Pelican, American Peregrine Falcon, Light-footed Clapper Rail, Least Bell's Vireo, and Belding's Savannah; 16 state and federal species of special concern¹⁰; ospreys; kites; great blue herons; egrets; kestrels; sandpipers; white tundra

⁵ U.S. E.P.A., Region IX. Total Maximum Daily Loads for Pesticides, PCBs and Sediment Toxicity in Oxnard Drain # 3, pg. 10 (Oct 2011).

⁶ *Id.* citing Ormond Beach Wetlands Restoration Project, 2011

⁷ *Id.*

⁸ *Id.* citing Williams, 1982.

⁹ Federal Endangered Species Act, 7 U.S.C. § 136, 16 U.S.C. 1531 et.seq.; California Endangered Species Act, California Fish & Game Code §§2050, et.seq.

¹⁰ *Id.*

swans that stop by on their way south from Alaska; and 40 state and federal special status plant species.¹¹

It is estimated that the wetlands at Ormond Beach once covered approximately 1,100 acres. Today, approximately 250 acres remain, but are degraded in large part from contaminated industrial, municipal, and agricultural storm water runoff and dry weather irrigation discharges; from compaction due to human use and dumping; from metals and radioactive constituents from the U.S. EPA Halaco Superfund Site¹² adjacent to the Ormond Beach Lagoon; and from hypersalinity due to lack of flushing. For instance, a 2008 U.S. EPA technical analysis of the extent and movement of contamination of the contaminants from the Halaco U.S. EPA Region 9 Superfund site indicates that the Halaco site is leaching elevated levels of iron into the Ormond Beach Wetlands surface and groundwater. In addition, a 2006 Ormond Beach Wetlands Restoration Study found that the surface waters of the Ormond Beach Wetlands northwest of the Arcturus Facility are impaired for iron, and presence of high levels of iron in the surface waters of the Western Arm of Mugu Lagoon in Oxnard Drain #3 at Arnold Road.

Ormond Beach is considered by wetland experts to be the most important wetland restoration opportunity in southern California. Unlike other coastal wetland restoration projects in southern California, there is room to restore the approximate extent of historic wetlands, and to provide surrounding upland habitat to complete the ecosystem and to accommodate sea level rise. The biological significance of this area has been recognized, and its restoration potential endorsed by all of the federal and state resource agencies that participate in the Southern California Wetlands Recovery Project.

The Oxnard and Port Hueneme communities, many public interest local non-profit organizations, and state entities have devoted considerable resources to protect and restore the Ormond Beach Wetlands. The Nature Conservancy and California Coastal Conservancy respectively, with the unanimous support of the County of Ventura and the City of Oxnard, have acquired significant Ormond Beach Wetlands parcels for conservation and restoration, and are pursuing acquisitions at Ormond Beach with a goal of acquiring at least 900 acres at Ormond Beach to accommodate wetland and other habitat needs. In addition, the local communities surrounding the Ormond Beach wetlands and numerous local grassroot non-profit groups have devoted substantial resources and energy to conduct significant Ormond Beach Wetlands restoration projects and to advocate for their protection and restoration. Wishtoyo Foundation and its Ventura Coastkeeper Program have, and continue to, help with the Ormond Beach restoration effort. In 2003, Wishtoyo conducted a major Phase I and Phase II Ormond Beach Wetlands Clean Up Project in partnership with Oxnard City Corps that resulted in the removal of invasive ice plant and debris such as rusted automobiles, unused piping, and other large, decayed sharp and toxic metal objects that littered the wetlands for decades; conducted a Ormond Beach Cultural Resources Study for the California Coastal Conservancy's Wetlands Restoration Feasibility Plan; have held numerous Ormond Beach Wetlands and J. Street Drain trash clean up events; have conducted water quality monitoring in the Ormond Beach Wetlands and its

¹¹ Special-status species are plants and animals that are legally protected under the federal Endangered Species Act, California Endangered Species Act, or other state regulations, and species that are considered sufficiently rare by the scientific community to warrant conservation concern.

¹² Technical Memorandum: Preliminary Evaluation of the Sources, Nature, Extent, and Movement of Contamination in in Surface Water and Groundwater; Halaco Site; Oxnard, California; Prepared for U.S. Environmental Protection Agency Region IX, 75 Hawthorne St., San Francisco, California 94105; Prepared by CH2M HILL (Dec. 2008).

tributaries; have submitted its Watershed Monitoring Program's data to the State Water Resources Control Board that document that the Wetlands are impaired for nitrate, pH, trash, and E. Coli and that accordingly support 2012 Clean Water Act 303(d) impaired waterbody listings for these constituents; and have actively advocated at local, state, and federal levels for the protection and restoration of the Ormond Beach Wetlands.

A critical mass of restored wetlands and associated habitat at Ormond Beach is expected to create a self-sustaining biological system and enough tidal prism and flushing action to maintain health and hydrologic function. Anticipated restoration at Ormond Beach would include expansion of the wetlands to mirror their historic extent; pollutant free wetlands that do not harm or pose threats to humans and aquatic, benthic, plant and avian wildlife; and modifications of wetlands hydrology to restore tidal action and bring back freshwater flows that had formerly drained across the Oxnard Plain to the coastal wetlands. When integrated with the adjoining 900 acres of freshwater wetlands and the 1,500 acres at Mugu Lagoon, the Ormond Beach Wetlands could be the largest coastal wetland in southern California, spanning nine miles of the coast from Point Hueneme to Point Mugu.

3. *Mugu Lagoon*

The portion of Mugu Lagoon, from Laguna Point east to Point Mugu, is part of the Mugu-Latigo Area of Special Biological Significance ("ASBS") as designated by the State of California for special ecological protections.¹³ The Mugu-Latigo ASBS is the largest of the mainland ASBS in Southern California, with 24 miles of coastline and 11,842 acres of marine habitat. Mugu Lagoon and its wetlands, home to the Chumash Native American Village of Muwu, is largely contained within the Mugu-Latigo ASBS. Mugu Lagoon is one of the key coastal wetlands in the state, supporting over 60,000 shorebirds each spring, up to 10,000 shorebirds in the winter, thousands of ducks during duck migration season and the winter, and 18 species of fish. It is an integral component of the Pacific Flyway, and over 205 avian species have been reported in the Lagoon, including five avian species listed under the Federal Endangered Species Act. One of the world's largest populations of Belding's Savannah Sparrow is found in Mugu Lagoon. Mugu Lagoon is also home to the farthest-north remaining population of Light-footed Clapper Rail. In addition, Peregrine Falcon have been observed at Mugu Lagoon, and Mugu Lagoon supports the largest remaining natural Brown Pelican roosting area in southwestern California.

¹³ The California State Water Resources Control Board ("SWRCB") under its Resolution No. 74-28, designated certain ASBS in the adoption of water quality control plans for the control of waste discharged to ocean waters. The ASBS are intended to afford special protection to marine life through prohibition of waste discharge within these areas. The concept of "Special Biological Significance" recognizes that certain biological communities, because of their value or fragility, deserve very special protection that consists of preservation and maintenance of natural water quality conditions to practicable extents (from SWRCB's and California Regional Water Quality Control Boards' Administrative Procedures. Sep. 24, 1970, Section XI. Misc.—Revision 7, (September 1, 1972)

II. The Arcturus Facility and Associated Discharges Standards

A. The Facility and Discharge Locations

According to Arcturus' Storm Water Pollution Prevention Plan ("SWPPP"), the Facility is 8.72-acres.¹⁴ At this facility, Arcturus forges, flash cuts, liquefies, handles, maintains, and loads, and unloads ferrous and non-ferrous parts. Industrial processes conducted at the site include two-piece can making, end making, coating, and palletizing finished product for shipment. Based on information contained in each of the NOIs on file with the State Board, as augmented by satellite mapping imagery available online and the December 6, 2016 reconnaissance visit conducted by Wishtoyo, the 8.72 acre Facility is located wetlands at the intersection of Arcturus Rd. to the east and McWane Blvd. to the South at 6001 Arcturus Rd., Oxnard, CA 93033. The Facility has at least seven discharge points receiving flow that drains toward unpaved areas along the perimeter of the facility. The SWPPP identifies a storm water collection system with no more than 3 sumps that direct storm water from the north, south, east and central portions to McWane Blvd where a PVC pipe outlet lies that is full of trash and other debris. The SWPPP acknowledges that this drain pipe at times is out of operation and/or overwhelmed, during which times the storm water flows east.¹⁵ The SWPPP does not explain to where the PVC pipe outlet drains.¹⁶ Wishtoyo alleges that discharges from the Arcturus Facility drain directly into the Oxnard Drain # 3, Ormond Beach Wetlands, Mugu Lagoon, the Ventura Coastline, and ultimately the Pacific Ocean.

B. Industrial Activities at the Arcturus Facility

Pollutants associated with operations at the Facility include, but are not limited to: substances affecting pH and specific conductance ("SC"); toxic metals such as iron, titanium, aluminum, lead, zinc, copper, and nickel; fecal coliform, E. coli, enterococci, indicator bacteria/total coliform; trash; total suspended solids ("TSS"); oil and grease ("O&G"); gasoline and/or diesel fuels; fuel additives; chemical metal coatings; and nitrates and nitrites as nitrogen.

Information available to Wishtoyo indicates that the Facility has not properly developed and/or implemented best management practices ("BMPs") to address pollutant sources and avoid contaminated discharges as required by the Permit. BMPs are necessary at the Facility to prevent the exposure of pollutants to precipitation and the subsequent discharge of polluted storm water during rain events.

As a consequence of the Facility's failure to develop and implement BMPs, during rain events storm water carries pollutants from the Facility into the storm sewer system and/or directly into the Receiving Waters. These illegal discharges of polluted storm water negatively impact Wishtoyo's members' use and enjoyment of the Ormond Beach and their tributary waters,, Mugu Lagoon and its tributary waters, Oxnard Drain # 3 and its tributary waters, the Ventura Coastline and its tributary streams, as well as associated water bodies and coastal resources, by degrading water quality, harming aquatic and aquatic-dependent life, and threatening human health and welfare.

¹⁴ SWPPP, pp.4-5

¹⁵ *Id.*, p.5

¹⁶ *Id.*, p. 5

C. Storm Water Pollution and the Facility's Receiving Waters

With every significant rainfall event millions of gallons of polluted storm water originating at industrial facilities pour into storm drains and local waterways. The consensus among agencies and water quality specialists is that storm water pollution accounts for more than half of the total pollution entering surface waters each year. In Ventura County, these discharges contribute not only to the impairment of the Ormond Beach Wetlands and Mugu Lagoon, but also the coastal waters, beaches and estuaries enjoyed by millions of residents and visitors to Southern California. Contaminated discharges threaten the health of the aquatic and associated terrestrial ecosystems in and around the Receiving Waters, and also the welfare of communities that live near and/or use these resources.

Polluted discharges from industrial facilities like Arcturus are known to contain substances affecting pH; metals, such as iron and aluminum; toxic metals, such as lead, zinc, cadmium, chromium, copper, arsenic, iron, aluminum, and mercury; COD; BOD; TSS; TOC; fecal coliform, E. coli, enterococci, indicator bacteria/total coliform; trash; benzene; gasoline and diesel fuels, fuel additives; coolants; antifreeze; nitrate + nitrite nitrogen ("N+N"); substances affecting SC; O&G; and trash. Discharges of polluted storm water and non-storm water to the Receiving Waters pose carcinogenic, developmental and reproductive toxicity threats to the public, and adversely affect the aquatic environment.

The Receiving Waters are ecologically sensitive areas. Although pollution and habitat destruction have drastically altered the natural ecosystem, the Receiving Waters are still essential habitat for hundreds of fish and bird species, as well as macro-invertebrate and invertebrate species; as well as various migratory and resident pinniped and cetacean species.

Storm water and non-storm water contaminated with sediment, heavy metals, and other pollutants harm the special aesthetic and recreational significance the Receiving Waters have for people in surrounding communities, including Wishtoyo members. The public's use of the Receiving Waters for water contact sports and fishing exposes many people to toxic metals, pathogens, bacteria and other contaminants in storm water and non-storm water discharges. Non-contact recreational and aesthetic opportunities, such as wildlife observation, are also impaired by polluted discharges to the Receiving Waters.

Polluted storm water discharges from industrial facilities like the Arcturus Facility contribute to the impairment of downstream surface waters, and aquatic dependent wildlife. A water body is impaired if it is unable to support its beneficial uses. The California Regional Water Quality Control Board, Los Angeles Region ("Regional Board") has issued its Water Quality Control Plan for the Los Angeles Region ("Basin Plan").¹⁷ The Basin Plan is designed to preserve and enhance water quality and protect the beneficial uses of all regional waters. Regional coastal waters identified in the Plan include bays, harbors, estuaries, beaches, and the open ocean.

¹⁷ The California Regional Water Quality Control Board, Los Angeles Region has issued its http://www.waterboards.ca.gov/losangeles/water_issues/programs/basin_plan/basin_plan_documentation.html.

The Basin Plan lists the beneficial uses for waters that receive polluted storm water discharges from the Arcturus Facility. These beneficial uses of these waters include: water contact recreation (REC-1), non-contact water recreation (REC-2), navigation (NAV), commercial and sport fishing (COMM), estuarine habitat (EST), wildlife habitat (WILD), rare, threatened, or endangered species (RARE), migration of aquatic organisms (MIGR) and spawning, reproduction and development (SPWN), marine habitat (MAR), Wetland Habitat (WET), Rare, Threatened, or Endangered Species (RARE), Shellfish Harvesting (SHELL), and Preservation of Biological Habitats (BIOL) such as Areas of Special Biological Significance (ASBS). See Basin Plan, pp. 2-1 - 2-5. Polluted storm water discharges from the Arcturus Facility cause and/or contribute to the impairment of water quality in the Ormond Beach Wetlands, the Ormond Beach Lagoon, Oxnard Drain # 3, Mugu Lagoon, and the Pacific Ocean; are toxic to aquatic life in these waterbodies and to resident and migratory birds that utilize these waterbodies; and adversely affect the environment. For example, Mugu Lagoon (Calleguas Creek Reach 1) and Oxnard Drain #3, which is the western most arm of Mugu Lagoon, are listed as impaired for sediment toxicity, and the Ormond Beach Lagoon and Wetlands adjacent to the Facility are contaminated with iron and other metals.

For the Ormond Beach Wetlands, the Ormond Beach Wetlands Lagoon, Oxnard Drain # 3, Mugu Lagoon, and Ventura's Coastal Waters to regain their health, for the Ormond Beach Wetlands and Mugu Lagoon restoration and protection efforts to succeed, and for these waterbodies threatened, endangered, migratory, and resident species, to recover and thrive, illegal contaminated storm water discharges must be eliminated.

D. Applicable Effluent Standards or Limitations

The General Industrial Permit requires all facilities to sample and analyze storm water discharges for the following parameters: pH, TSS, SC, and TOC or O&G. 1997 Permit, § B(5)(c)(i); 2015 Permit, §§ XI(B)(6)(a)-(b). As noted above, the Facility is classified under SIC Code 3462, which requires that all storm water samples are analyzed for additional contaminants, including Aluminum, Iron, N+N and Zinc. See 1997 Permit, Table D; 2015 Permit, Table 1.

The EPA published "benchmark" levels as numeric thresholds to aid in determining whether a facility discharging industrial storm water had implemented the requisite best available technology ("BAT") and/or best control technology ("BCT") as mandated by the Act. See *United States Environmental Protection Agency NPDES Multi-Sector General Permit for Storm Water Discharges Associated with Industrial Activity*, as modified effective May 9, 2009. EPA's benchmarks serve as objective measures for evaluating whether a permittee's BMPs achieve BAT/BCT standards as required by Effluent Limitation B(3) of the 1997 Permit. Under the 2015 Permit, the State Board replaced the use of "benchmarks" with Numeric Action Levels ("NALs"). See 2015 Permit, § V(A). NALs are derived from, and function similar to, EPA benchmarks. See 2015 Permit Fact Sheet, § I(D)(5). Benchmarks and NALs represent pollutant concentrations at which a storm water discharge could impair, or contribute to impairing, water quality and/or affect human health.

EPA benchmarks and/or NALs established for pollutants discharged from the Facility are summarized below at Table 1.

TABLE 1
BENCHMARK AND NAL VALUES FOR POLLUTANTS AT ARCTURUS FACILITY

PARAMETER/ POLLUTANT	EPA BENCHMARK	ANNUAL NAL	INSTANTANEOUS MAX NAL
pH	6.0-9.0 s.u.	n/a	6.0-9.0 s.u.
TSS	100 mg/L	100 mg/L	400 mg/L
O&G	15 mg/L	15 mg/L	25 mg/L
SC	200 uhmos/cm	200 uhmos/cm	n/a
TOC	110 mg/L	110 mg/L	n/a
COD	120 mg/L	120 mg/L	n/a
Al	0.75 mg/L	0.75 mg/L	n/a
N+N	0.68 mg/L	0.68 mg/L	n/a
Fe	1.0 mg/L	1.0 mg/L	n/a
Zn	0.117 mg/L	0.26 mg/L	n/a

III. Violations of the Clean Water Act, the Storm Water Permit, and the California Ocean Plan

The Act requires that any person discharging pollutants to waters of the United States from a point source obtain coverage under an NPDES permit, such as the General Industrial Permit. *See* 33 U.S.C. §§ 1311(a), 1342; 40 C.F.R. § 122.26(c)(1). As described above, both the 1997 Permit and the 2015 Permit require that all dischargers meet all applicable provisions of Act's Sections 301 and 402. Rather than requiring specific application of BAT or BCT to each storm water discharge, compliance with the terms and conditions of the Permit serves as a proxy for compliance with the technology-based treatment requirements. *See e.g.* 1997 Permit, Finding 10. Thus, compliance with the General Industrial Permit constitutes compliance with the Act for purposes of storm water discharges. 33 U.S.C. §§ 1311(b)(2)(A), 1311(b)(2)(E). Conversely, failure to comply with the terms and conditions of the Permit constitutes a violation of the Act for failure to subject discharges to BAT/BCT.

The citizen suit provisions of the Act provide that “any citizen” may commence a suit “against any person,” including a corporation, “who is alleged to be in violation of an effluent standard or limitation under this chapter.” 33 U.S.C § 1365(a)(1). The Act then defines “effluent standard or limitation” to include “a permit or condition” issued under section 402. *Id.* § 1365(f)(6). Accordingly, Wishtoyo may commence a suit alleging violations of the General Industrial Permit by the Facility. *See Natural Resources Defense Council v Southwest Marine, Inc.*, 236 F. 3d 985 (9th Cir. 2000) (allowing citizen action for alleged storm water permit violations holding company liable for discharges of “significant contributions of pollutants” and inadequate record keeping).

Additionally, in furtherance of the California Water Code, to protect California's coastal waters, the State Board created the California Ocean Plan (amended in 1978, 1983, 1988, 1990, 1997, 2001, 2005, 2009, 2012, and 2016) to control the discharge of waste to ocean waters.¹⁸ Beneficial Uses of the ocean waters include water contact and non-contact recreation, commercial and sport fishing, marine habitat, and preservation and enhancement of designated Areas of Special Biological Significance, to name a few. The limitation set forth in the Ocean Plan, including its ASBS discharge prohibition and combination of numeric and narrative water quality standards for bacterial, physical, chemical, and biological characteristics, are intended to protect the designated beneficial uses. Any person who discharges storm water or non storm water to an Ocean Plan Designated ASBS is in violation of the Ocean Plan, is in violation of the California Water Code.

In the years since enrolling the General Industrial Permit program, Arcturus has failed to carry out its Permit obligations, and thereby violated the Clean Water Act. As discussed in further detail below, the Facility is in ongoing violation of the General Industrial Permit, and its violations span at least the last 5 years. Specifically, the Facility has repeatedly discharged exceedingly high levels of pollutants, including, but not limited to, aluminum, iron, nitrate + nitrite, total suspended solids and zinc, in violation of the Effluent Limitations and Receiving Water Limitations, and has failed and continues to fail to comply with monitoring and reporting requirements.

A. Arcturus' Discharges of Polluted Storm Water Violates the Permit's Effluent Limitations

Effluent Limitation section B(3) of the 1997 Permit and V(A) of the 2015 Permit require dischargers to reduce or prevent pollutants in their storm water discharges through the implementation of BMPs that meet BAT standards for toxic and non-conventional pollutants, and BCT standards for conventional pollutants¹⁹ In particular, as explained above, benchmarks and NALs values represent pollutant concentrations at which a storm water discharge could impair, or contribute to impairing, water quality and/or affect human health. The analytical results from a given facility are measured against EPA's benchmarks to determine whether BMPs are adequate to qualify as meeting the statutory mandate. An exceedance of a benchmark or NAL requires dischargers to implement improved BMPs and revise the facility SWPPP. *See* 2015 Permit Section XII. Thus, exceedances of the benchmarks and/or NALs evidence failure to comply with both the Permit and Act.

According to information available to Wishtoyo, including a thorough review of both electronic and hard copy files in RWQCB's possession, the Facility has been in continuous violation of the Permit's Effluent Limitations for the entirety of the relevant five years statute of limitations—January 17, 2012 to January 17, 2017. The data available to Wishtoyo relevant to violations of the Permit's Effluent Limitation, which is limited by the Facility's sporadic sampling,²⁰ are summarized below at Table 2. Of note, for the past five years statute of

¹⁸ California Water Code §§ 13000 *et seq.*; State Water Resources Control Board, 2015 California Ocean Plan Water Quality Control Plan for Ocean Waters of California.

¹⁹ Toxic pollutants are listed at 40 C.F.R. § 401.15; conventional pollutants are listed at 40 C.F.R. § 401.16.

limitations time period, sample results are only available for the Facility for the 2014-2015 and 2015-2016 wet seasons. Wishtoyo has been unable to determine if Arcturus took any required samples or submitted a required 2011-2012 wet season Annual Report to the Board. Then, for the 2012-2013 and 2013-2014 wet seasons, Arcturus took zero samples because it reported there were purportedly no qualifying storm events – a questionable conclusion given that the nearest precipitation monitoring station (*see Exhibit A hereto*) reported 29 qualifying rain events during this time period.

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TABLE 2

SAMPLING DATA -- ONGOING EXCEEDANCES OF EFFLUENT LIMITATIONS -- MULTIPLE POLLUTANTS

Line	Sample Date	Parameter	Obsv'd Concentration	EPA Benchmark	Applicable NAL	Sample Point
1	1/5/2016	Aluminum	4.62 mg/L	0.75 mg/L	0.75 mg/L	DP-3
2	1/5/2016	Aluminum	3.47 mg/L	0.75 mg/L	0.75 mg/L	DP-5
3	1/5/2016	Aluminum	1.41 mg/L	0.75 mg/L	0.75 mg/L	DP-6
4	1/5/2016	Aluminum	2.15 mg/L	0.75 mg/L	0.75 mg/L	DP-7
5	3/11/2016	Aluminum	2.01 mg/L	0.75 mg/L	0.75 mg/L	DP-1
6	3/11/2016	Aluminum	2.26 mg/L	0.75 mg/L	0.75 mg/L	DP-2
7	3/11/2016	Aluminum	3.45 mg/L	0.75 mg/L	0.75 mg/L	DP-4
8	3/11/2016	Aluminum	1.31 mg/L	0.75 mg/L	0.75 mg/L	DP-7
9	12/2/2014	Iron	2.97 mg/L	1.0 mg/L	1.0 mg/L	DP-3
10	12/2/2014	Iron	2.07 mg/L	1.0 mg/L	1.0 mg/L	DP-5
11	12/2/2014	Iron	2.17 mg/L	1.0 mg/L	1.0 mg/L	DP-7
12	4/7/2015	Iron	19.5 mg/L	1.0 mg/L	1.0 mg/L	DP-3
13	4/7/2015	Iron	83 mg/L	1.0 mg/L	1.0 mg/L	DP-5
14	4/7/2015	Iron	44.3 mg/L	1.0 mg/L	1.0 mg/L	DP-7
15	1/5/2016	Iron	10.5 mg/L	1.0 mg/L	1.0 mg/L	DP-3
16	1/5/2016	Iron	6.36 mg/L	1.0 mg/L	1.0 mg/L	DP-5
17	1/5/2016	Iron	2.51 mg/L	1.0 mg/L	1.0 mg/L	DP-6
18	1/5/2016	Iron	3.35 mg/L	1.0 mg/L	1.0 mg/L	DP-7
19	3/11/2016	Iron	4.38 mg/L	1.0 mg/L	1.0 mg/L	DP-1
20	3/11/2016	Iron	5.05 mg/L	1.0 mg/L	1.0 mg/L	DP-2
21	3/11/2016	Iron	7.05 mg/L	1.0 mg/L	1.0 mg/L	DP-4
22	3/11/2016	Iron	2.73 mg/L	1.0 mg/L	1.0 mg/L	DP-7
23	4/7/2015	Nickel	1.15 mg/L		1.02 mg/L	DP-3
24	4/7/2015	Nickel	2.34 mg/L		1.02 mg/L	DP-5
25	4/7/2015	Nickel	1.09 mg/L		1.02 mg/L	DP-7
26	1/5/2016	Zinc	3.16 mg/L	0.117 mg/L	0.26 mg/L	DP-3
27	1/5/2016	Zinc	0.524 mg/L	0.117 mg/L	0.26 mg/L	DP-5
28	1/5/2016	Zinc	0.403 mg/L	0.117 mg/L	0.26 mg/L	DP-6
29	1/5/2016	Zinc	0.250 mg/L	0.117 mg/L	0.26 mg/L	DP-7
30	3/11/2016	Zinc	0.484 mg/L	0.117 mg/L	0.26 mg/L	DP-1
31	3/11/2016	Zinc	0.546 mg/L	0.117 mg/L	0.26 mg/L	DP-2
32	3/11/2016	Zinc	1.15 mg/L	0.117 mg/L	0.26 mg/L	DP-4
33	3/11/2016	Zinc	0.246 mg/L	0.117 mg/L	0.26 mg/L	DP-7
34	12/2/2014	SC	269 umhos/cm	200 umhos/cm	200 umhos/cm	DP-5
35	4/7/2015	SC	1220 umhos/cm	200 umhos/cm	200 umhos/cm	DP-3
36	4/7/2015	SC	1220 umhos/cm	200 umhos/cm	200 umhos/cm	DP-5
37	4/7/2015	SC	1070 umhos/cm	200 umhos/cm	200 umhos/cm	DP-7
38	12/2/2014	TSS	523 mg/L	100 mg/L	100 mg/L	DP-7
39	4/7/2015	TSS	271 mg/L	100 mg/L	100 mg/L	DP-5
40	4/7/2015	TSS	491 mg/L	100 mg/L	100 mg/L	DP-7
41	1/5/2016	TSS	140 mg/L	100 mg/L	100 mg/L	DP-3
42	1/5/2016	TSS	187 mg/L	100 mg/L	100 mg/L	DP-5
43	3/11/2016	TSS	152 mg/L	100 mg/L	100 mg/L	DP-4
44	1/5/2016	nitrate & nitr	1.37 mg/L	0.68 mg/L	0.68 mg/L	DP-3
45	1/5/2016	nitrate & nitr	1.21 mg/L	0.68 mg/L	0.68 mg/L	DP-5
46	3/11/2016	nitrate & nitr	1.05 mg/L	0.68 mg/L	0.68 mg/L	DP-1
47	3/11/2016	nitrate & nitr	0.975 mg/L	0.68 mg/L	0.68 mg/L	DP-2
Permittees shall monitor for TSS, ORG, PH. Additional, SIC 3462 permittees shall monitor for Zn; N+N, Fe, Al. Industrial General Permit Order pg. 42.						
<p>** The NAL is the highest value used by USEPA based on their hardness table in the 2008 MSGP, 2015 Industrial General Permit Order p. 43)</p> <p>(http://www.waterboards.ca.gov/water_issues/programs/stormwater/docs/industrial/2014indgenpermit/wq_o2014_0057_dwq_revmar2015.pdf) (last checked 12/26/16)</p>						

The results of this storm water sample analysis – to the extent Arcturus took samples – between December 2014 and March 2016 show consistent exceedances of the EPA benchmark levels and applicable NAL values for various indicator parameters, including SC, and TSS, as well as all parameters for which SIC code 3462 facilities must sample/analyze, including Aluminum, Iron, Nickel, Zinc, and N+N. In numerous cases the Facility has self-reported to the Board exceedances of parameters by orders of magnitude—see e.g. line 1 exceedance of the relevant Aluminum benchmark by 600%, line 13 exceedance of relevant Iron benchmark by nearly 8300%, and line 26 exceedance of the Zinc NAL by nearly 2700%.²¹ Information available to Wishtoyo, including the sampling data summarized above in Table 2, demonstrates that the Facility has failed and continues to fail to develop or implement BMPs that achieve compliance with the Act’s BAT/BCT mandates.

Wishtoyo puts Arcturus on notice that it violates the Permit’s Effluent Limitations and the Act every time it discharges storm water without adequate BMPs (see Exhibit A “Storm Event Summary” listing storm events from the National Oceanic Atmospheric Administration website <https://www.ncei.noaa.gov/> between 2012 and 2017 (last visited on 1/13/17) likely to produce sufficient storm water discharges to allow sampling/analysis at the Facility.). These discharge violations are ongoing and will continue every time the Facility discharges polluted storm water without developing and implementing BMPs consistent with BAT/BCT standards. Wishtoyo may supplement and update Table 2 as additional data becomes available. Arcturus is subject to civil penalties for all violations of the Clean Water Act occurring since January 17, 2012.

Further, Wishtoyo puts Arcturus on notice that the 2015 Permit Effluent Limitation V.A is a separate, independent requirement which with the Facility must comply, and that carrying out the iterative process triggered by exceedances of NALs listed in Table 2 of the 2015 Permit does not amount to compliance with Effluent Limitation V.A. While exceedances of the NALs demonstrate that the Facility has failed and continues to fail to implement pollution prevention measures required by the Permit, the NALs do not represent technology based criteria relevant to determining whether an industrial facility has implemented BMPs that achieve BAT/BCT.²² And even if Arcturus submits an Exceedance Response Action Plan as required by Section XII of the 2015 Permit, the violations of Effluent Limitations V.A described herein are ongoing.

B. Arcturus’ Discharges of Polluted Storm Water Violates the Permit’s Receiving Water Limitations

1. *Primary Receiving Water Limitations*

First, receiving Water Limitation C(2) prohibits storm water discharges and authorized non-storm water discharges that cause or contribute to an exceedance of an applicable Water

²¹ Self-monitoring reports under the Permit are deemed “conclusive evidence of an exceedance of a permit limitation.” *Sierra Club v Union Oil*, 813 F.2d 1480, 1493 (9th Cir. 1988).

²² “The NALs are not intended to serve as technology-based or water quality-based numeric effluent limitations. The NALs are not derived directly from either BAT/BCT requirements or receiving water objectives. NAL exceedances defined in [the 2015] Permit are not, in and of themselves, violations of [the 2015] Permit.” 2015 Permit, Finding 63, p. 11. The NALs do, however, trigger reporting requirements. See 2015 Permit, Section XII.

Quality Standard (“WQS”).²³ The 1997 and 2015 Storm Water Permit includes the same receiving water limitation. See 2015 Permit, Receiving Water Limitation VI.A. Samples of storm water discharged from the Arcturus Facility have demonstrated exceedances of the Basin Plan’s water quality standards for numerous pollutants (see Table 2). These discharges that contain pollutants in excess of an applicable water quality standard violate Receiving Water Limitation C(2) of the Storm Water Permit and the Clean Water Act, including the EPA’s California Toxic’s Rule (“CTR”) at 40 C.F.R. § 131.38. *Santa Monica Baykeeper v. Kramer Metals, Inc.* 619 F.Supp.2d 914 (C.D. Cal 2009)

2. Secondary Receiving Water Limitations

Second, receiving Water Limitation C(1) of the 1997 General Storm Water Permit prohibits storm water discharges and authorized non- storm water discharges to surface water that adversely impact human health or the environment. Storm Water Permit, Receiving Water Limitation C(1). The 2015 Permit includes the same receiving water limitation. See 2015 Permit, Receiving Water Limitation VI. B. Discharges that contain pollutants in concentrations that exceed levels known to adversely impact aquatic species and the environment constitute violations of Receiving Water Limitation C(1) of the 2015 Storm Water Permit, and the Clean Water Act.

For instance, one example of violations of Receiving Water Limitations C(1) of the 1997 General Storm Water Permit and 2015 Storm Water Permit is that the Arcturus Facility’s storm water discharges contain elevated concentrations of iron in amounts that have been demonstrated to cause: acute and chronic toxicity to aquatic life and aquatic plants; change in the diversity and abundance of aquatic life; change in aquatic community structure and function; impacts to metabolism and osmoregulation of aquatic life; change in the structure and quality on benthic invertebrate habitat and food resources leading to decline in benthic invertebrate populations and diversity; and increases in aquatic organisms dietary supply of metals that can result in toxicity effects that ripple through an ecosystem’s food chain. These impacts from the Arcturus Facility’s discharges of iron not only cause or contribute to impacts to the aquatic, avian, and terrestrial life of the Ormond Beach Wetlands, Mugu Lagoon, the western branch of Mugu Lagoon/ Oxnard Drain #3, the Ormond Beach Lagoon, and the Pacific Ocean, but the humans that catch and or eat fish from theses waterbodies.

Samples of storm water discharged from the Arcturus Facility from December 2013 through the 2016 rainy season, taken by the Arcturus Facility Owners and/or Operators and as reported in the Facility’s Annual Reports, have continuously contained iron at concentrations from 1.1 milligrams per liter to 83 milligrams per liter, in exceedance of the U.S. Environmental Protection Agency National Recommended Water Quality Criteria for Freshwater Aquatic Life Protection of 1 mg/L. Discharges that contain pollutants in concentrations that exceed levels known to adversely impact aquatic species and the environment constitute violations of Receiving Water Limitation C(1) of the Storm Water Permit and the Clean Water Act. And this discussion concerns only one of the metals present in the Facility’s discharges – other metals

²³ The Basin Plan designates Beneficial Uses for the Receiving Waters. Water quality standards are pollutant concentration levels determined by the state or federal agencies to be protective of designated Beneficial Uses. Discharges above water quality standards contribute to impairment of Receiving Waters’ Beneficial Uses. Applicable water quality standards include, among others, the CTR, and water quality objectives in the Basin Plan.

such as zinc and aluminum present at the levels in the Facility's stormwater discharges have additional toxicity impacts.

Wishtoyo puts Arcturus on notice that the 2015 Permit's Receiving Water Limitations are violated as detailed above each time polluted storm water discharges from the Facility, including each event summarized in Table 2. These discharge violations are ongoing and will continue every time contaminated storm water is discharged. Each time discharges of storm water from the Facility adversely impact human health or the environment is a separate and distinct violation of Receiving Water Limitations C(1) of the 1997 Permit, Receiving Water Limitation VI.B of the 2015 Permit, and Section 301(a) of the Clean Water Act. 33 U.S.C. §131(a). Each time discharges of storm water from the Facility violate an applicable WQS, is a separate and distinct violation of Receiving Water Limitations C(2) of the 1997 Permit, Receiving Water Limitation VI.A of the 2015 Permit, and Section 301(a) of the Clean Water Act. 33 U.S.C. §131(a). Wishtoyo will update violation dates as additional data becomes available.

C. Failure to Develop, Implement, &/or Revise an Adequate Storm Water Pollution Prevention Plan

The 1997 Permit requires industrial facility operators to develop and implement a comprehensive Storm Water Pollution Prevention Plan that meets all of the requirements of the Storm Water Permit prior to beginning industrial activities. The 2015 Permit includes the same SWPPP requirements and objectives found in Sections X.A.-C and Section X.D.-H.

Section A(1) and Provision E(2) of the Storm Water Permit require dischargers to have developed and implemented a SWPPP by October 1, 1992, or prior to beginning industrial activities, that meets all of the requirements of the Storm Water Permit. The objectives of the SWPPP requirement are to identify and evaluate sources of pollutants associated with industrial activities that may affect the quality of storm water discharges from the Arcturus Facility, and to implement site-specific BMPs to reduce or prevent pollutants associated with industrial activities in storm water discharges. See Storm Water Permit, Section A(2). These BMPs must achieve compliance with the Storm Water Permit's Effluent Limitations and Receiving Water Limitations. To ensure compliance with the Storm Water Permit, the SWPPP must be evaluated on an annual basis pursuant to the requirements of Section A(9), and must be revised as necessary to ensure compliance with the Storm Water Permit. *Id.*, Sections A(9) and (10). See 2015 Permit, Section X.A.-C.

Sections A(3) – A(10) of the Storm Water Permit set forth the requirements for a SWPPP. Among other requirements, the SWPPP must include: a site map showing the facility boundaries, storm water drainage areas with flow patterns, nearby waterbodies, the location of the storm water collection, conveyance and discharge system, structural control measures, areas of actual and potential pollutant contact, areas of industrial activity, and other features of the facility and its industrial activities (see Storm Water Permit, Section A(4)); a list of significant materials handled and stored at the site (see Storm Water Permit, Section A(5)); a description of potential pollutant sources, including industrial processes, material handling and storage areas, dust and particulate generating activities, significant spills and leaks, non-storm water discharges and their sources, and locations where soil erosion may occur (see Storm Water Permit, Section A(6)). Sections A(7) and A(8) of the Storm Water Permit require an assessment of potential pollutant sources at the facility and a description of the BMPs to be implemented at the facility

that will reduce or prevent pollutants in storm water discharges and authorized non-storm water discharges, including structural BMPs where non-structural BMPs are not effective. The 2015 Permit includes the same SWPPP requirements and objectives. See 2015 Permit, Section X.D.-H.

Wishtoyo's review of Arcturus' SWPPP demonstrates that the Arcturus Facility Owners and/or Operators have not developed and/or implemented a SWPPP that meets the requirements of Section A and Provision E(2) of the 1997 and 2015 Storm Water Permits, accordingly. For example, the Arcturus Facility Owners and/or Operators have and continue to fail to develop and/or implement adequate BMPs to prevent the exposure and subsequent discharge of pollutants from the Arcturus Facility at levels that achieve the EPA Benchmarks. Additionally, the SWPPP site location map and site map fail to identify all the storm drain inlets and nearby surface waters receiving waters that receive discharges from the Arcturus Facility, in violation of Section 4(A) of the Storm Water Permit. Further, despite continuing violations of the Storm Water Permits and notice from Regional Water Control Board regulators, information available to Wishtoyo indicates that the Arcturus Facility Owners and/or Operators have not revised the SWPPP as necessary to ensure compliance with the Storm Water Permit, in violations of Sections A(9) and (10) of the Storm Water Permit.

Every day the Arcturus Facility operates with an inadequately developed, implemented, and/or properly revised SWPPP is a separate and distinct violation of the Storm Water Permit and the Clean Water Act. The Arcturus Facility Owners and/or Operators have been in daily and continuous violation of the Storm Water Permit's SWPPP requirements every day since at least January 17, 2012. These violations are ongoing and Wishtoyo will include additional violations as information becomes available.

D. Failure to Develop, Implement, and/or Revise an Adequate Monitoring & Reporting Program

The 1997 Permit requires industrial facility operators to develop and implement an adequate Monitoring and Reporting Program ("MRP") before industrial activities begin at a facility. See 1997 Permit, § B(1). The 2015 Permit contains substantially identical requirements. See 2015 Permit, § XI. The primary objective of the Monitoring and Reporting Program is to detect and measure the concentrations of pollutants in a facility's discharges to determine compliance with the Permit's Effluent Limitations and Receiving Water Limitations. An adequate Monitoring and Reporting Program must be reviewed and revised in response to analyses and observations in order to ensure that BMPs are effectively reducing and/or eliminating pollutants from the Facility's activities from entering the Receiving Waters. As discussed above, the Permit includes specific provisions requiring the Facility to respond to NAL value exceedances by revising and improving BMPs when analytical results demonstrate breaches. See 2015 Permit, § XII.

The 1997 Permit and 2015 Permit both contain the same basic requirements, which include conducting visual observations of storm water discharges and authorized non-storm water discharges, collect and analyze samples of storm water discharges for relevant pollutants, revise and change the SWPPP and/or facility operations as necessary in response to analytical data, and file and certify an Annual Report. See e.g. 1997 Permit §§ (B)3-(B)16.

1. *Failure to Sample and Analyze for Mandatory Parameters*

The 1997 Permit required dischargers to collect storm water samples during the first hour of discharge from the first storm event of a wet season, and at least one other storm event during a reporting year.²⁴ See 1997 Permit, § B(5). The 2015 Permit created a more demanding schedule, and requires the Facility to sample and analyze four storm water discharges over the course of a reporting year. See 2015 Permit, § XI(B)(2). Under the 1997 Permit, facilities must sample from qualifying storm events, which occur when there is a discharge of storm water during facility operating hours that was preceded by at least three working days without a storm water discharge. See 1997 Permit, § B(5)(b). The 2015 Permit broadens the definition of qualifying storm event by requiring only 48-hours without a storm water discharge from any drainage area. See 2015 Permit, § XI(B)(1)(b). A sample must be collected from each discharge point at the Facility, and in the event that an operator fails to collect from each discharge point, the operators must still collect samples from two other storm events, and explain in the Annual Report why the first storm event was not sampled.

All industrial facilities must analyze samples collected for TSS, pH, Specific Conductance, and either TOC or O&G.²⁵ 1997 Permit, § B(5)(c)(i); 2015 Permit § XI(B)(6). Facilities must also analyze their storm water samples for “[t]oxic chemical and other pollutants that are likely to be present in storm water discharges in significant quantities.” 1997 Permit, § B(5)(c)(ii); 2015 Permit § XI(B)(6)(c). Facilities with certain SIC Codes must also analyze for additional parameters that are likely to be present in storm water discharges from their industrial category. 1997 Permit § B(5)(c)(iii); 2015 Permit XI(B)(6)(d). A facility with SIC code 3462 must analyze all samples for four additional parameters likely to be present due to the specifics of industrial processes taking place at the facility—including Zinc, Iron, Aluminum and N+N. 1997 Permit, Table D; 2015 Permit, Table 1. Arcturus, with a SIC code of 3462, has repeatedly failed to comply with these monitoring and reporting requirements.

Wishtoyo’s review of Arcturus’ monitoring data indicates that the Facility has failed to submit an Annual Report with water quality sampling in 2011-2012; failed to sample in 2012-2013 and 2013-2014 despite numerous qualifying rain events as set forth in Exhibit A hereto;; failed to analyze for Specific Conductance since the 2014-15 wet season; and failed to analyze for any of the Table D/Table 1 parameters in storm water events prior to the 2015-16 wet season. These failures are especially concerning given that the area surrounding the Facility contains the Ormond Beach Wetlands, Ventura’s coast, Mugu Lagoon, and an Area of Special Biological Significance.

2. *Failure to Comply with the Permit’s Reporting Requirements*

Section B(14) of the 1997 Permit requires Arcturus to submit an Annual Report to the Regional Board by July 1 of each year. Section B(14) requires that the Annual Report include a summary of visual observations and sampling results, an evaluation of the visual observation and sampling results, the laboratory reports of sample analysis, the annual comprehensive site

²⁴ A storm water reporting year runs from June 1 to July 31, e.g. June 1, 2012 through July 31, 2013 constitutes storm water reporting year 2012-2013.

²⁵ Under the 2015 Permit, facilities are no longer required to analyze storm water samples for Specific Conductance.

compliance evaluation report, an explanation of why a permittee did not implement any activities required, and other information specified in Section B(13). The 2015 Permit includes substantially identical annual reporting requirement. *See* 2015 Permit, Section XVI.

Arcturus has failed and continues to fail to submit Annual Reports that comply with these reporting requirements. For example, in each Annual Report since the filing of the 2010-2011 Annual Report, Arcturus has certified that: (1) a complete Annual Comprehensive Site Compliance Evaluation was done pursuant to Section A(9) of the Storm Water Permit; (2) the SWPPP's BMPs address existing potential pollutant sources and additional BMPs are not needed; and (3) the SWPPP complies with the General Industrial Permit, or will otherwise be revised to achieve compliance. However, information available to Wishtoyo indicates that these certifications are erroneous. For example, as discussed above, an annual report was not submitted for the 2011-12 wet season, no samples were taken in 2012-2013 and 2013-2014 despite many qualifying rain events, storm water samples collected from the Facility contain many examples of concentrations of pollutants above levels set by EPA's benchmarks, the State Board's NALs or levels established in applicable WQSs, and the Facility failed to sample for critically important parameters despite evidence of substantial pollutants in storm water discharges. These facts demonstrate that the SWPPP's BMPs do not adequately address existing potential pollutant sources, and any certification to the contrary was erroneous and/or false.

Additionally, the facility operator must report any noncompliance with the Storm Water Permit at the time that the Annual Report is submitted, including 1) a description of the noncompliance and its cause, 2) the period of noncompliance, 3) if the noncompliance has not been corrected, the anticipated time it is expected to continue, and 4) steps taken or planned to reduce and prevent recurrence of the noncompliance. *See* 1997 Permit, § C(11)(d). Arcturus has failed, and continues to fail, to report non-compliance as required. The massive exceedances in Iron during 2015 and Zinc in 2016 should have triggered reporting to the Board and revisions to both the SWPPP and operational procedures.

Information available to Wishtoyo indicates that Arcturus has submitted incomplete and/or incorrect Annual Reports that fail to comply with the General Industrial Permit. As such, the Facility is in daily violation of the Permit, and every day the Facility operates without reporting as required by the Permit is a separate and distinct violation of the Permit and Section 301(a) of the Act. 33 U.S.C. §1311(a). Arcturus has been in daily and continuous violation of the Permit's reporting requirements every day since at least January 17, 2012. These violations are ongoing. Wishtoyo will include additional violations when information becomes available, including specifically violations of the 2015 Permit reporting requirements. *See* 2015 Permit, §§ XII, XVI.

E. Discharge of Polluted Storm Water from the Arcturus Facility in Violation of the Ocean Plan

1. *The Ocean Plan Requirements and Areas of Special Biological Significance*

In the 1970s, the State Board designated thirty-four areas off California's Pacific Coast as ASBS. These areas have been re-designated State Water Quality Protection Areas, but are still

referred to as ASBSs.²⁶ The Mugu Lagoon ASBS in Ventura County and Los Angeles County begins at Mugu Lagoon (Laguna Point) and ends at Latigo Point in the City of Malibu in the County of Los Angeles (the “Mugu to Latigo ASBS”). Like all other ASBSs, the Mugu to Latigo ASBS was determined to be a unique area that deserves special protection. For example, Mugu to Latigo ASBS contains five major sub-tidal habitat types, including extensive sub-tidal reefs. Because of the “intrinsic value” and fragile nature of ASBSs, the State Water Resources Control Board has determined that in order to preserve and enhance the Beneficial Use of ASBSs, the water quality objectives in the Ocean Plan shall prohibit the discharge of any pollutants to an ASBS. Specifically, the Ocean Plan states that “[w]aste shall not be discharged to areas designated as being of special biological significance.” Ocean Plan, Section III(E), Section III(I). Discharges of waste near ASBSs are also prohibited. Id. Waste is “a discharger’s total discharge, of whatever origin, i.e., gross, not net, discharge.” Appendix I, Ocean Plan. Therefore, the Arcturus Facility’s discharges of waste containing pollutants such as iron in any amount into or near the Mugu to Latigo ASBS, or containing iron exceeding the U.S. Environmental Protection Agency National Recommended Water Quality Criteria for Freshwater Aquatic Life Protection for iron of 1 mg/L, violate the Ocean Plan’s waste discharge prohibition.

2. *The Arcturus Facility’s Violations of the Ocean Plan’s Waste Discharge Prohibition into the Mugu Lagoon to Latigo Point ASBS*

As indicated in the attached Exhibit A, information available to Wishtoyo indicates that during each significant rain event, dates of which are identified in Exhibit A, the Arcturus Facility has been discharging waste containing pollutants in its storm water discharges, such as iron in elevated concentrations, into and near the Mugu to Latigo ASBS since at least December 02, 2014 in violation of the California Ocean Plan and its waste discharge prohibition. Ocean Plan, Section III(E), Section III(I). Every day the Arcturus Facility discharges storm water, into and near the Mugu to Latigo ASBS, with waste containing pollutants such as iron, the other metals present in Arcturus’ discharges, or with waste containing iron exceeding the U.S. Environmental Protection Agency National Recommended Water Quality Criteria for Freshwater Aquatic Life Protection for iron of 1 mg/L, is a separate and distinct violation of the Ocean Plan and California Water Code. These violations are ongoing, and will continue each day contaminated storm water containing waste such as iron is discharged into and near the Mugu to Latigo ASBS from the Arcturus Facility. In light of the Facility’s history of violations and the nature of the violations, the Facility will continue to violate the Ocean Plan’s requirements in the future unless and until they are enjoined from doing so.

IV. Persons Responsible for the Violation

Wishtoyo puts Arcturus, Precision Castparts Corporation, Mark Donegan, Shawn Hagel, Ruth Beyer, Ken Buck, Armando Bautista, Warren Buffett and Berkshire Hathaway, Inc. on notice that they are the entities and/or persons responsible for the violations described above. If additional corporate or natural persons are identified as also being responsible for the violations described herein, Wishtoyo puts Arcturus, Precision Castparts Corporation, Mark Donegan, Shawn Hagel, Ruth Beyer, Ken Buck, Armando Bautista, Warren Buffett and Berkshire Hathaway, Inc. on notice that it intends to include those persons in this section as well.

²⁶ According to State Water Board Resolution No. 2005-0035, the State Water Quality Protection Areas are protected by the same laws and regulations as ASBSs.

V. Name and Address of Noticing Party

Mati Waiya, Executive Director
Wishtoyo Foundation
9452 Telephone Rd. #432
Ventura, CA 93004
(805) 823-3301

VI. Counsel

Please direct all communications to Wishtoyo Foundation's and its Ventura Coastkeeper Program's Counsel at:

Gideon Kracov
Law Office of Gideon Kracov
801 Grand Avenue, Floor 11
Los Angeles, CA 90017
gk@gideonlaw.net
213-629-2071

and

Jason Weiner
Wishtoyo Foundation
General Counsel
9452 Telephone Road #432
Ventura, CA 93004
jweiner.venturacoastkeeper@wishtoyo.org
805-823-3301

VII. Penalties

Pursuant to Section 309(d) of the Act (33 U.S.C. § 1319(d)) and the Adjustment of Civil Monetary Penalties for Inflation (40 C.F.R. § 19.4) each separate violation of the Act subjects the Facility to a penalty of up to \$37,500 per day per violation. In addition to civil penalties, Wishtoyo will seek injunctive relief to prevent further violations of the Act pursuant to Sections 505(a) and (d), and such other relief as permitted by law. *See* 33 U.S.C. §§ 1365(a), (d). Lastly, Section 505(d) of the Act permits prevailing parties to recover costs and fees, including attorneys' fees. *See* 33 U.S.C. § 1365(d).

Wishtoyo believes this Notice of Violations and Intent to File Suit sufficiently states grounds for filing suit. Wishtoyo intends to file a citizen suit under Section 505(a) of the Act against the Arcturus Facility and its agents for the above-referenced violations upon the expiration of the 60-day notice period. However, during the 60-day notice period, Wishtoyo would be willing to discuss effective remedies for the violations noted in this letter. If you wish

to pursue such discussions in the absence of litigation, Wishtoyo suggests that you initiate those discussions within the next 20 days so that they may be completed before the end of the 60-day notice period as Wishtoyo does not intend to delay the filing of a complaint in federal court.

Sincerely,



Mati Waiya
Executive Director & Chumash Ceremonial Elder
Wishtoyo Foundation & Wishtoyo Foundation's Ventura
Coastkeeper Program

Attachment A – Rain Event Data for Arcturus Facility: 2012 through 2017

Cc: Gina McCarthy, EPA Administrator
Loretta Lynch, U.S. Attorney General
Alexis Strauss, Acting EPA Regional Administrator
Thomas Howard, Executive Director SWRCB
Samuel Unger, Executive Officer RWQCB
DOJ, Citizen Suit Coordinator

SERVICE LIST – via certified mail

Gina McCarthy, Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460

Thomas Howard, Executive Director
State Water Resources Control Board
P.O. Box 100
Sacramento, CA 95812-0100

Loretta Lynch, U.S. Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, N.W.
Washington, DC 20530-0001

Alexis Strauss, Acting Regional Administrator
U.S. EPA – Region 9
75 Hawthorne Street
San Francisco, CA, 94105

Samuel Unger, Executive Officer II
Los Angeles Regional Water Quality Control Board
320 West Fourth Street, Suite 200
Los Angeles, CA 90013

Citizen Suit Coordinator
DOJ-Environmental and Natural Resources Division
Law and Policy Section
P.O. Box 7415
Ben Franklin Station
Washington, DC 20044-7415

Exhibit ARain Event Data for Arcturus Facility: 2012 through 2017

Station Name : Oxnard Ventura CO. Airport, CA US Station ID:GHCND:USW00093110

Source: <https://www.ncei.noaa.gov/> last visited 1/13/17

Year	Month	Day	Total Rain (Inches)	Day of Week
2011	12	12	0.3	M
2012	1	21	0.91	Sa
2012	1	23	0.72	M
2012	3	17	0.81	Sa
2012	3	25	1.56	S
2012	4	10	0.25	T
2012	4	11	0.75	W
2012	4	13	0.66	F
2012	4	25	0.12	W
2012	11	17	0.47	Sa
2012	11	28	0.21	W
2012	11	29	0.21	Th
2012	11	30	0.31	F
2012	12	1	0.16	Sa
2012	12	2	0.45	S
2012	12	18	0.15	T
2012	12	23	0.14	S
2012	12	24	0.45	M
2012	12	29	0.11	Sa
2013	1	6	0.15	S
2013	1	24	0.61	Th
2013	1	25	0.17	F
2013	1	26	0.12	Sa
2013	2	19	0.14	T
2013	3	7	0.59	Th
2013	3	8	0.29	F
2013	3	31	0.16	S
2013	5	6	0.13	M
2013	11	20	0.27	W
2013	11	21	0.21	Th
2013	11	29	0.12	F
2013	12	7	0.24	Sa
2014	2	6	0.23	Th
2014	2	26	0.69	W
2014	2	27	0.69	Th
2014	2	28	2.24	F
2014	3	1	0.79	Sa
2014	3	31	0.15	M
2017	1	4	0.70	W
2017	1	5	0.37	Th
2017	1	7	0.37	Sa
2017	1	9	0.79	M

Year	Month	Day	Total Rain (Inches)	Day of Week
2014	10	31	0.49	F
2014	12	2	1.31	T
2014	12	3	0.38	W
2014	12	11	0.16	Th
2014	12	12	1.86	F
2014	12	17	0.21	W
2015	1	10	0.94	Sa
2015	1	11	0.58	S
2015	1	26	0.12	M
2015	2	7	0.2	Sa
2015	2	22	0.14	S
2015	2	28	0.3	Sa
2015	3	1	0.21	S
2015	4	7	0.12	T
2015	5	14	0.13	Th
2015	6	9	0.16	T
2015	7	18	0.26	Sa
2015	9	14	0.21	M
2015	9	15	0.49	T
2015	10	4	0.38	S
2015	12	19	0.26	Sa
2016	1	5	1.36	T
2016	1	6	0.81	W
2016	1	7	0.42	Th
2016	1	19	0.17	T
2016	1	31	0.39	S
2016	2	17	0.22	W
2016	2	18	0.1	Th
2016	3	5	0.26	Sa
2016	3	6	0.83	S
2016	3	7	0.34	M
2016	3	11	0.75	F
2016	4	9	0.39	Sa
2016	10	28	0.21	F
2016	10	30	0.16	S
2016	11	20	0.46	S
2016	11	26	0.51	Sa
2016	12	15	0.57	Th
2016	12	16	0.23	F
2016	12	23	1.47	F

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18

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26 Attorneys for Defendant
27 TRIUMPH PROCESSING INC.

28 UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

LOS ANGELES WATERKEEPER, a
non-profit corporation,

Plaintiff,

v.

TRIUMPH PROCESSING INC., a
corporation; DOES 1 through 10,

Defendants.

Case No. 2:16-cv-07037-PSG-KS

**JOINT NOTICE OF SETTLEMENT
AND REQUEST TO SET OSC RE:
[PROPOSED] CONSENT DECREE**

**[PROPOSED] ORDER SUBMITTED
HEREWITH**

(Federal Water Pollution Control Act,
33 U.S.C. §§ 1251 to 1387)

1 TO THE HONORABLE COURT:

2 Plaintiff Los Angeles Waterkeeper ("Plaintiff") and Defendant Triumph
3 Processing Inc. ("Defendant") have reached settlement of all claims in this action
4 and have agreed to language of a [Proposed] Consent Decree, attached hereto as
5 Exhibit A. The settlement is contingent upon (i) expiration of the 45-day agency
6 review period as required by the federal Clean Water Act, and (ii) entry of the
7 [Proposed] Consent Decree by the Court.

8 In accordance with the federal Clean Water Act, no order disposing of this
9 action may be entered prior to 45 days following receipt of the [Proposed] Consent
10 Decree by the relevant federal agencies, including the United States Department of
11 Justice and the National and Region IX offices of the United States Environmental
12 Protection Agency.¹ The federal regulatory agencies' review period will end on or
13 about May 8, 2017. If any of the reviewing agencies object to the [Proposed]
14 Consent Decree, the parties will require additional time to meet and confer to
15 attempt to resolve any concerns raised by those agencies.

16 Consequently, and for good cause appearing, the parties respectfully request
17 that the Court set May 15, 2017 or as soon thereafter as is convenient for the Court
18 as a date for an Order to Show Cause re: Entry of the [Proposed] Consent Decree.
19 The parties stipulate and agree that all other deadlines in this matter, including the
20 deadline for Defendant to file an answer or otherwise respond to the Complaint,
21 can be vacated. In the event the [Proposed] Consent Decree is not entered by the
22 Court for any reason, Plaintiff agrees that Defendant shall have thirty (30) days from
23 the date of any such order declining to enter the [Proposed] Consent Decree in
24 which to respond to the Complaint filed in this action.

25
26 ¹ See 33 U.S.C. § 1365(c) ("No consent judgment shall be entered in an action in which
27 the United States is not a party prior to 45-days following the receipt of a copy of the
28 proposed consent judgment by the Attorney General and the Administrator."); see also
40 C.F.R. § 135.5 (requiring the parties to provide notice to the Court of the 45-day agency
review period under 33 U.S.C. § 1365(c)).

1 A [Proposed] Order is submitted herewith.

2
3 DATED: March 24, 2017

LAW OFFICES OF GIDEON KRACOV

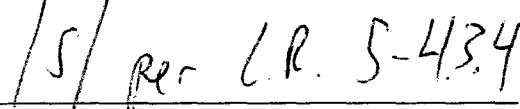


Gideon Kracov

6 Attorneys for Plaintiff
7 LOS ANGELES WATERKEEPER

8 DATED: March 24, 2017

BALLARD SPAHR LLP



Scott S. Humphreys

12 Attorneys for Defendant
13 TRIUMPH PROCESSING, INC.

14 Pursuant to Local Rule 5-4.3.4, the filer of this document attests that all of the
15 signatories listed, and on whose behalf the filing is submitted, concur in the filing's
16 content and have authorized the filing.

1 d. All payments required under sections F (paras. 35 and 36) and G (paras. 39-41)
2 of this Consent Decree are made; and

3 e. Following the Effective Date, monitoring data from four (4) consecutive storm
4 water samples collected at each discharge point demonstrate pollutant
5 concentrations in stormwater discharges do not exceed the numeric levels in
6 Table 1;

7 10. To terminate early as provided above, Defendant shall file a motion for
8 early termination with the Court. Defendant shall provide Plaintiff and its counsel with
9 written notice at least thirty-five (35) days prior to filing any motion for termination of
10 the Consent Decree.

11 11. Upon receipt of the written request to terminate, Waterkeeper may conduct
12 an inspection of the Facilities within thirty (30) calendar days and Triumph will work
13 with Waterkeeper to schedule and accommodate the inspection, if requested, within the
14 30-day period. During the Site Inspection, Defendant shall allow Waterkeeper and/or its
15 representatives access to the Facilities' SWPPP, M&RP, and storm water monitoring
16 records. Further, Defendants shall allow Waterkeeper and/or its representatives to
17 collect during the site inspection split samples of storm water or non-stormwater
18 discharges, if applicable, at the Facilities. Waterkeeper shall be permitted to take
19 photographs or video recording during any Site Inspection and will, upon request,
20 provide photographs and/or video to Triumph within fourteen (14) calendar days.
21 Notwithstanding the foregoing, Waterkeeper agrees that all individuals participating in a
22 Site Inspection will execute, and be subject to, waivers, releases and similar agreements
23 as were executed in connection with the Site Inspection conducted on October 26, 2016,
24 including but not limited to those forms establishing restrictions on allowed recorded
25 documentary images or depictions.

26 12. Unless there is an ongoing, unresolved dispute regarding Defendant's
27 compliance with this Consent Decree, thirty-five (35) calendar days after written notice
28

1 was given, Defendant may move the Court to terminate the Consent Decree and
2 Waterkeeper shall not oppose the motion.

3 **III. COMMITMENTS OF THE PARTIES**

4 **A. Industrial Storm Water Pollution Control Measures**

5 13. Any non-stormwater discharges ("NSWDs") from the Facilities must be
6 authorized by the 2015 Permit or another NPDES permit.

7 14. All storm water pollution measures required by this Consent Decree will be
8 implemented at the Facilities. Any disputes over the adequacy and/or timing of the
9 implementation of BMPs shall be resolved pursuant to the dispute resolution provisions
10 of this Consent Decree, set out in Section IV below.

11 15. BMP Plan. Triumph has implemented or will implement in connection with
12 the sampling and discharge points depicted in the site maps attached hereto as Exhibit A
13 the following additional BMPs by March 1, 2017, or the Effective Date of this Consent
14 Decree, whichever occurs later;

- 15 a. Cover any and all product and crates outside of Plants 1 and 2 with an
16 impermeable material (e.g. tarps, 10-15mm polyethylene sheeting) during a
storm event or the threat of a storm event;
- 17 b. Maintain the existing BMP (multiple filter socks) at Discharge Point 2 (of
18 Plant 1) prior to and during any/all storm events. Triumph shall, consistent
19 with the action plan process detailed below in Paragraphs 23-27 of section C,
install and maintain a more robust BMP if at any point during the term of this
20 Consent Decree either of the two scenarios exist: i) analytical results
21 demonstrate that the existing BMP is not effective (i.e. according to Paragraph
22 23 below); or ii) Triumph becomes aware that the existing BMP is being over-
topped, is bypassed or provides inadequate opportunity for water contact from
discharges;
- 23 c. Perform weekly powered vacuum truck sweeping of all areas of outdoor
industrial operations;
- 24 d. Perform daily push-broom sweeping of the 50' x 50' area located directly east
25 of the Plant 1 building and the area directly south of the northern yard wall
26 (with higher potential for pollutant build up within the flow-path for Sample
Point 2 at Plant 1);

- e. Purchase and employ geo-textile covers for inlets at Sample Points 1 and 2 at Plant 2 for the purpose of preventing pollution from entering inlets during dry weather;
- f. Maintain inlets at Sample Points 1 and 2 (at Plant 2) with filters to allow for sampling after water contacts filter media; and
- g. Install a berm at Plant 2 to help prevent run-off onto or from neighboring property to the north, and pursue upgrades as needed to achieve adequate water tightness and structural integrity.

B. Monitoring and Reporting Program (M&RP)

16. Sample Frequency. The Defendant shall collect storm water samples in the event that discharges occur at the Facilities from at least four (4) qualifying storm events per Reporting Year in accordance with Section XI.B. of the 2015 Permit. Any failure to sample a discharge from each discharge location at the Facilities until the specified four (4) qualifying storm events per Reporting Year have been sampled shall be documented and submitted to Waterkeeper within ten (10) days of the date a sample was required to have been collected but was not.

17. Sample Analysis. The Defendant shall analyze samples collected in accordance with sampling and analysis procedures specified by the Permit for Total Suspended Solids, pH, Oil & Grease, Zinc, Nitrate + Nitrite Nitrogen, Aluminum, Iron, Chromium (total), as well as such additional constituents required by the Permit. The Defendant shall select laboratories and analytical limits such that, at a minimum, the method detection limits are below the numeric limits in Table 1.

18. Sample Analysis at Plant 1. The Defendant shall use Sample Point 1 (located prior to any filter medium) for internal evaluation purposes only, and shall collect reportable storm water samples from each of the following locations at Plant 1:

- a. Sample Point 2 [Northern Drainage Swale];
- b. Sample Point 3 [Southern Roof Drain Outlet].

19. Sample Analysis at Plant 2. The Defendant shall collect storm water samples from each of the following locations at Plant 2:

- a. Sample Point Inlet 1 [Control Yard Stormwater Collection Point]; and

1 b. Sample Point Inlet 2 [Northern Storm Drain Inlet].

2 20. Written Report. Defendant shall submit a written report to Waterkeeper at
3 the end of each Reporting Year listing all storm events that occurred and resulted in a
4 discharge at any of the Facilities' stormwater outfalls. The report shall be submitted on
5 or before July 30 every year during the term of this Consent Decree and must include a
6 table summarizing analytical results from Facilities' storm water samples and comparing
7 those results to the numeric limits in Table 1.

8 21. Revising the M&RP. Within thirty (30) calendar days of the Effective Date
9 of this Consent Decree, Defendant shall revise its M&RP within its SWPPP for the
10 Facilities to incorporate the requirements of this Consent Decree and the 2015 Permit.
11 The Defendant shall submit the revised M&RP to Waterkeeper for review and comment
12 as soon as it is completed but in any event no later than within thirty (30) calendar days
13 following the Effective Date. Waterkeeper shall provide comments, if any, to the
14 Defendant within thirty (30) calendar days following receipt of the revised M&RP. The
15 Defendant shall incorporate Plaintiff's comments into the M&RP, or shall justify in
16 writing why any comment is not incorporated within thirty (30) calendar days of
17 receiving comments. Any disputes over the adequacy of the revised M&RP shall be
18 resolved pursuant to the dispute resolution provisions of this Consent Decree, set out in
19 Section IV below.

20 **C. Numeric Limits**

21 22. Numeric Limits. If sampling results show four or more exceedances of
22 numeric limits in Table 1 at any one of the four Sample Points at Plants 1 and 2 in a
23 single Reporting Year, Triumph shall comply with the requirements specified below in
24 this Section III.C of this Consent Decree.
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Table 1. Numeric Limits

Contaminant	Numeric Limits
Total Suspended Solids	100 mg/L
pH	6.0-9.0
Oil and Grease	15 mg/L
Nitrate + Nitrite Nitrogen	0.68 mg/L
Zinc	0.117 mg/L
Aluminum	0.75 mg/L
Iron	1.0 mg/L
Chromium (total)	Report only

23. Action Plan for Table 1 Exceedances during the Consent Decree. In any Reporting Year during which sampling at any one of the four Sample Points at Plants 1 and 2 demonstrates four (4) or more exceedances of numeric limits in Table 1, Triumph shall prepare and submit a plan for reducing and/or eliminating the discharge relating to the relevant Sampling Point(s) of those pollutants exceeding their respective numeric limits ("Action Plan") to Waterkeeper by July 1 following the Reporting Year in which the exceedances giving rise to the obligation to submit an Action Plan occurred. Triumph also shall submit an Action Plan to the Waterkeeper by July 1, 2017, to evaluate and control the presence of chromium in stormwater discharges from Sample Point 1 at Plant 2 based on this evaluation.

24. Action Plan Requirements. Each Action Plan submitted shall be in writing and shall include, at a minimum: (1) the identification of the pollutant(s) exceeding Table 1's numeric limits, (2) an assessment of the source of each exceedance, (3) the identification of additional BMPs that will be implemented to achieve compliance with the respective numeric limits, and (4) time schedules for implementing proposed BMPs, which shall not exceed the following October 1 unless otherwise agreed by the Parties in writing. With respect to zinc, Triumph reserves the right to identify in an Action Plan and implement BMPs which Triumph believes comply with the 2015 Permit, including all applicable Effluent and Receiving Water limitations in Sections V and VI of the 2015 Permit, instead of the zinc numeric limit, if BMPs cannot reasonably achieve compliance

1 with the zinc numeric limit. With respect to chromium, the Action Plan instead shall
 2 include (1) an assessment of the sources of detected chromium, (2) the identification of
 3 additional BMPs that will be implemented to control chromium levels in storm water
 4 discharges from the facilities, and (3) time schedules for implementing proposed BMPs,
 5 which shall not exceed the following October 1 unless otherwise agreed by the Parties in
 6 writing.

7 25. Action Plan Review. Waterkeeper shall have 30 days upon receipt of
 8 Defendant's Action Plan to provide Defendant with comments. Within 30 days from the
 9 date of receipt of Waterkeeper's written comments on Defendant's Action Plan,
 10 Defendant shall provide Waterkeeper with a written explanation as to the reasons
 11 Defendant is not incorporating any particular Waterkeeper comment into its Action Plan.
 12 Any disputes as to the adequacy of the Action Plan shall be resolved pursuant to the
 13 dispute resolution provisions set out in Section IV below.

14 26. If any structural BMPs require any government agency approval, then
 15 Defendant shall contact Waterkeeper to request an extension of the deadline, if
 16 necessary, to implement the structural BMPs requiring agency approval. Waterkeeper
 17 shall not unreasonably withhold consent to an extension request.

18 27. Defendant shall have until October 1 following the Reporting Year in which
 19 the obligation to submit an Action Plan occurred to implement the Action Plan.
 20 Defendant shall notify Waterkeeper in writing when the Action Plan has been
 21 implemented.

22 **D. Storm Water Pollution Prevention Plan**

23 28. SWPPP Revisions. Within thirty (30) calendar days of the Effective Date
 24 of this Consent Decree, Defendant shall revise the SWPPP to comply with Section X.A
 25 of the 2015 Permit and this Consent Decree. The Defendant shall submit the revised
 26 SWPPP to Waterkeeper for review and comment as soon as it is completed, but in any
 27 event no later than thirty (30) calendar days following the Effective Date. Waterkeeper
 28

1 shall provide comments, if any, to Defendant within thirty (30) calendar days of receipt
 2 of the SWPPP. Defendant shall incorporate Plaintiff's comments into the SWPPP, or
 3 explain in writing why any comment is not incorporated, within thirty (30) calendar days
 4 of receiving comments. Any disputes as to the adequacy of the revised SWPPP shall be
 5 resolved pursuant to the dispute resolution provisions set out in Section IV of this
 6 Consent Decree.

7 **E. Employee Training**

8 29. Within thirty (30) calendar days of the Effective Date, Defendant shall
 9 review and revise its employee training program established in its SWPPP to comply
 10 with the requirements of this Consent Decree and the 2015 Permit, including any
 11 training materials, as necessary, for implementation of the training program ("Training
 12 Program").

13 30. The Training Program shall provide (a) that there be a sufficient number of
 14 employees delegated to achieve compliance with the Storm Water Permit and this
 15 Consent Decree, and (b) that these employees are properly trained to perform the
 16 required compliance activities under the 2015 Permit and this Consent Decree. Such
 17 Training Program shall be specified in the SWPPP.

18 31. The Training Program shall require specific training to include at least the
 19 following:

20 a. Non-Storm Water Discharge Training. The Defendant shall train all
 21 employees about the 2015 Permit's prohibition of non-storm water discharges so that
 22 employees know what non-storm water discharges are, how to detect them, and how to
 23 prevent them;

24 b. BMP Training. The Defendant shall train all employees responsible for
 25 BMP implementation and maintenance to ensure that BMPs are used effectively to
 26 prevent the exposure, discharge, and/or treatment of storm water at the Facilities.
 27
 28

1 c. Sampling Training. The Defendant shall train all individuals collecting
2 samples at the Facilities pursuant to this Consent Decree or the 2015 Permit on the
3 proper sampling protocols, including chain of custody requirements, to ensure storm
4 water and/or non-storm water samples are properly collected, stored, and submitted to a
5 certified laboratory;

6 d. Visual Observation Training. The Defendant shall provide training to all
7 individuals performing visual observations at the Facilities pursuant to this Consent
8 Decree and the 2015 Permit.

9 32. Training shall be provided by a Qualified Industrial Storm Water
10 Practitioner ("QISP", as defined in Section IX.A of the 2015 Permit) familiar with the
11 requirements of this Consent Decree and the 2015 Permit, and shall be repeated as
12 necessary to ensure that all relevant employees are familiar with the requirements of this
13 Consent Decree, the 2015 Permit, and the Facilities' SWPPP. All relevant new staff
14 shall receive this training before assuming responsibilities for implementing the SWPPP
15 or the M&RP.

16 33. The Defendant shall maintain training records to document compliance with
17 this paragraph, and shall provide Waterkeeper with a copy of these records within
18 fourteen (14) days of receipt of a written request.

19 34. Annual Site Inspections. Waterkeeper may conduct one annual site
20 inspection ("Site Inspection") on terms substantially identical to those agreed to by the
21 Settling Parties for the October 26, 2016 site visit, which would not include any
22 sampling of stormwater. Site Inspections shall occur during normal business hours, and
23 Waterkeeper will provide Defendant with as much notice as possible, but at least twenty-
24 four (24) hours notice prior to a Site Inspection in anticipation of wet weather, and
25 seventy-two (72) hours notice during dry weather. Notice will be provided by telephone
26 and electronic mail. Waterkeeper agrees that all individuals participating in a Site
27 Inspection will execute, as necessary, waivers, releases and similar agreements.
28

1 **F. Compliance Monitoring and Reporting**

2 35. Waterkeeper's Compliance Monitoring. Defendant shall pay a total of
3 seven thousand, five hundred dollars (\$7,500) to compensate Waterkeeper for costs and
4 fees to be incurred for monitoring Defendant's compliance with this Consent Decree.
5 Payment shall be made within fifteen (15) days of the Effective Date payable to "Los
6 Angeles Waterkeeper" addressed to: Los Angeles Waterkeeper, 120 Broadway, Suite
7 105, Santa Monica, California 90401, and sent via courier or overnight delivery. Failure
8 to submit payment as required under this paragraph will constitute a breach of the
9 Consent Decree.

10 36. Action Plan Payments. Defendant shall pay three thousand, five hundred
11 dollars (\$3,500) for each Action Plan for which the Waterkeeper submits comments
12 under Paragraph 25 above. Payments shall be made payable to "Los Angeles
13 Waterkeeper" and addressed to: Los Angeles Waterkeeper, 120 Broadway, Suite 105,
14 Santa Monica, CA 90401, and sent via courier or overnight delivery. Failure to submit a
15 payment as required under this paragraph will constitute a breach of the Consent Decree.

16 37. Data Reporting. During the life of this Consent Decree, Defendant shall
17 provide Waterkeeper with a copy of all Consent Decree and 2015 Permit compliance
18 and monitoring data, including any inspection reports which Triumph is required to
19 maintain under the 2015 Permit, on a quarterly basis. The Defendant shall provide
20 Waterkeeper with all stormwater sampling and analytical results taken at the Facilities
21 within fifteen (15) days of the Defendant's receipt of all results for each sampling event.

22 38. Document Provision. During the life of this Consent Decree, Defendant
23 shall copy Waterkeeper on all documents and communications related to stormwater
24 discharges at the Facilities that are submitted to the Regional Board, the State Board,
25 and/or any State, local, county, or municipal agency authorized to regulate stormwater.
26 Such reports and documents shall be provided to Waterkeeper concurrently as they are
27 sent to the agencies and/or municipalities. Any correspondence related to stormwater
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1 discharges received from any such State, county, or municipal regulatory agency, shall
2 be provided to Waterkeeper within five (5) business days of receipt by the Defendant.

3 **G. Environmental Project, Reimbursement of Litigation Fees and Costs,**
4 **and Stipulated Penalties**

5 39. Environmental Project. The Defendant agrees to make a payment of thirty
6 thousand dollars (\$30,000) within thirty (30) calendar days of the Effective Date to The
7 Rose Foundation for a project related to water quality designed to analyze, reduce,
8 prevent, or otherwise mitigate the ecological and/or public health effects of storm water
9 and/or non-stormwater discharges into Los Angeles area waterbodies. The payment
10 shall be mailed via certified mail or overnight delivery to Tim Little, Rose Foundation
11 for Communities and the Environment, Attn: LA Waterkeeper v Triumph Processing
12 Receiver, 1970 Broadway, Suite 600, Oakland, CA 94612-2218. Defendant shall
13 provide Waterkeeper with a copy of such payment.

14 40. Reimbursement of Plaintiffs' Fees and Costs. The Defendant agrees to
15 partially reimburse Plaintiff for its investigation fees and costs, consultant fees and costs,
16 reasonable attorneys' fees, and other costs incurred as a result of investigating and filing
17 the lawsuit, and negotiating a resolution of this matter in an amount totaling fifty
18 thousand dollars (\$50,000). All such payments shall be made payable to Law Office of
19 Gideon Kracov and delivered by certified mail or overnight delivery at 801 S. Grand
20 Av., 11th Floor, Los Angeles, CA 90017.

21 41. Stipulated Payment. The Defendant shall make a remediation payment of
22 six hundred dollars (\$600) for each missed deadline included in this Consent Decree.
23 Payments for a missed deadline shall be made for the restoration and/or improvement of
24 the watershed in the area affected by the Defendant's alleged discharges and shall be
25 awarded to The Rose Foundation, and mailed via certified mail or overnight delivery per
26 the terms described above in Paragraph 39. The Defendant agrees to make the stipulated
27 payment within thirty (30) days of a missed deadline, unless the Waterkeeper agreed in
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1 writing to an extension of that deadline, and make the payment via overnight delivery or
 2 by certified mail. The Defendant shall provide Waterkeeper with a copy of each such
 3 payment at the time it is made.

4 **H. Agency Review of Consent Decree**

5 42. Plaintiff shall submit this Consent Decree to the United States Department
 6 of Justice and the United States Environmental Protection Agency (the Federal
 7 Agencies), within three (3) business days of the final signature of the Parties, for agency
 8 review consistent with 40 C.F.R. § 135.5. The agency review period expires forty-five
 9 (45) calendar days after receipt by both agencies, as evidenced by written
 10 acknowledgement of receipt by the agencies or the certified return receipts, copies of
 11 which shall be provided to Defendant. In the event that the Federal Agencies object to
 12 entry of this Consent Decree, the Parties agree to meet and confer to attempt to resolve
 13 the issue(s) raised by the Federal Agencies.

14 **IV. DISPUTE RESOLUTION**

15 43. This Court shall retain jurisdiction over this matter for the purposes of
 16 adjudicating all disputes among the Parties that may arise under the provisions of this
 17 Consent Decree. The Court shall have the power to enforce this Consent Decree with all
 18 available legal and equitable remedies, including contempt.

19 44. Meet and Confer. Either party to this Consent Decree may invoke the
 20 dispute resolution procedures of this Section by notifying the other party in writing of
 21 the matter(s) in dispute and of the disputing party's proposal for resolution under this
 22 Section. The Parties shall then meet and confer in an attempt to resolve the dispute no
 23 later than thirty (30) calendar days from the date of the notice.

24 45. If the Parties cannot resolve the dispute within 30 days after the meet and
 25 confer described in paragraph 44, the Parties agree to request a settlement meeting
 26 before the Judge assigned to this action. In the event that the Parties cannot resolve the
 27
 28

1 dispute by the conclusion of the settlement meeting with the Judge, the Parties agree to
2 submit the dispute via motion to the District Court.

3 46. In resolving any dispute arising from this Consent Decree, the Court shall
4 have discretion to award attorneys' fees and costs to either party. The relevant portions
5 of the then-applicable Clean Water Act and Rule 11 of the Federal Rules of Civil
6 Procedure and applicable case law interpreting such provisions shall govern the
7 allocation of fees and costs in connection with the resolution of any disputes before the
8 District Court. Plaintiff and Defendant agree to file any waivers necessary for the Judge
9 to preside over any settlement conference and motion practice.

10 **V. MUTUAL RELEASE OF LIABILITY AND COVENANT NOT TO SUE**

11 47. In consideration of the above, upon the Effective Date of this Consent
12 Decree, the Parties hereby fully release, except for claims for Defendant's failure to
13 comply with this Consent Decree and as expressly provided below, each other and their
14 respective successors, assigns, officers, agents, employees, and all persons, firms and
15 corporations having an interest in them, from any and all alleged CWA violations
16 claimed in the Complaint, up to and including the Termination Date of this Consent
17 Decree.

18 48. Nothing in this Consent Decree limits or otherwise affects Plaintiff's or
19 Defendant's respective rights to address or take any position that it deems necessary or
20 appropriate in any formal or informal proceeding before the Regional Board, EPA, or
21 any other judicial or administrative body on any other matter or claim not addressed in
22 this Consent Decree and relating to the Defendant.

23 49. Neither the Consent Decree nor any payment pursuant to the Consent
24 Decree shall constitute or be construed as a finding, adjudication, or acknowledgement
25 of any fact, law or liability, nor shall it be construed as an admission of violation of any
26 law, rule, or regulation. The Defendant maintains and reserves all defenses they may
27 have to any alleged violations that may be raised in the future.
28

1 50. Force Majeure. The Defendant shall notify Waterkeeper pursuant to the
2 terms of this paragraph, when timely implementation of the requirements set forth in this
3 Consent Decree becomes impossible, despite the timely good-faith efforts of the
4 Defendant, due to circumstances beyond the reasonable control of the Defendant or its
5 agents, and which could not have been reasonably foreseen and prevented by the
6 exercise of due diligence by the Defendant. Any delays due to Defendant's failure to
7 make timely and bona fide applications and to exercise diligent efforts to obtain
8 necessary permits, or due to normal inclement weather, shall not, in any event, be
9 considered to be circumstances beyond Defendant's control. In no circumstances shall a
10 claim of inability to pay be considered Force Majeure.

11 a. If the Defendant claims impossibility, it shall notify Waterkeeper in writing
12 within twenty-one (21) calendar days of the date that the Defendant first knew of the
13 event or circumstance that caused or would cause a violation of this Consent Decree.
14 The notice shall describe the reason for the nonperformance and specifically refer to this
15 Section. It shall describe: i) the anticipated length of time the delay may persist; ii) the
16 cause or causes of the delay; iii) the measures taken or to be taken by the Defendant to
17 prevent or minimize the delay; iv) the schedule by which the measures will be
18 implemented; and v) the anticipated date of compliance. The Defendant shall adopt all
19 reasonable measures to avoid and minimize such delays.

20 b. The Parties shall meet and confer in good-faith concerning the non-
21 performance and, where the Parties concur that performance was or is impossible,
22 despite the timely good faith efforts of the Defendant, due to circumstances beyond the
23 control of Defendant that could not have been reasonably foreseen and prevented by the
24 exercise of due diligence by the Defendant, the Parties shall agree upon new deadlines.

25 c. If Waterkeeper disagrees with the Defendant's notice, or in the event that
26 the Parties cannot timely agree on the terms of new performance deadlines or
27 requirements, either party shall have the right to invoke the Dispute Resolution
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1 Procedure pursuant to Section IV. In such proceeding, the Defendant shall bear the
2 burden of proving that any delay in performance of any requirement of this Consent
3 Decree was caused or will be caused by force majeure and the extent of any delay
4 attributable to such circumstances.

5 **VI. MISCELLANEOUS PROVISIONS**

6 51. Construction. The language in all parts of this Consent Decree shall be
7 construed according to its plain and ordinary meaning, except as to those terms defined
8 in the 2015 Permit, the Clean Water Act, or specifically herein.

9 52. Choice of Law. The laws of the United States shall govern this Consent
10 Decree.

11 53. Severability. In the event that any provision, paragraph, section, or
12 sentence of this Consent Decree is held by a court to be unenforceable, the validity of
13 the enforceable provisions shall not be adversely affected.

14 54. Correspondence. All notices required herein or any other correspondence
15 pertaining to this Consent Decree shall be sent by regular mail or electronic mail as
16 follows:

17
18 If to Plaintiff:

19 Arthur Pugsley
20 Melissa Kelly
21 Staff Attorney
22 Los Angeles Waterkeeper
23 120 Broadway, Suite 105
24 Santa Monica, CA 90401
25 arthur@lawaterkeeper.org
26 melissa@lawaterkeeper.org
27
28

1 With copies to:

2 Bruce Reznik
3 Executive Director
4 Los Angeles Waterkeeper
5 bruce@lawaterkeeper.org

6 If to Defendant:

7 Glenn Unterberger (Penn. Bar No. 58667)
8 BALLARD SPAHR LLP
9 1735 Market Street, 51st Floor
10 Philadelphia, PA 19103-7599
11 unterberge@ballardspahr.com

12 With copies to:

13 Ashok Advani, General Manager
14 Triumph Processing Inc.
15 2605 Industry Way
16 Lynwood, California 90262
17 aadvani@triumphgroup.com

18 Notifications of communications shall be deemed submitted three (3) days after the date
19 that they are postmarked and sent by first-class mail, or immediately after
20 acknowledgement of receipt via email by the receiving party. Any change of address or
21 addresses shall be communicated in the manner described above for giving notices.

22 55. Effect of Consent Decree. Plaintiff does not, by its consent to this Consent
23 Decree, warrant or aver in any manner that the Defendant's compliance with this
24 Consent Decree will constitute or result in compliance with any federal or state law or
25 regulation. Nothing in this Consent Decree shall be construed to affect or limit in any
26 way the obligation of the Defendant to comply with all federal, state, and local laws and
27 regulations governing any activity required by this Consent Decree.
28

1 56. Counterparts. This Consent Decree may be executed in any number of
2 counterparts, all of which together shall constitute one original document. Telecopy
3 and/or facsimile copies of original signature shall be deemed to be originally executed
4 counterparts of this Consent Decree.

5 57. Modification of the Consent Decree. This Consent Decree, and any
6 provisions herein, may not be changed, waived, discharged, or terminated unless by a
7 written instrument, signed by the Parties.

8 58. Full Settlement. This Consent Decree constitutes a full and final settlement
9 of this matter.

10 59. Integration Clause. This is an integrated Consent Decree. This Consent
11 Decree is intended to be a full and complete statement of the terms of the agreement
12 between the parties and expressly supersedes any and all prior oral or written
13 agreements, covenants, representations, and warranties (express or implied) concerning
14 the subject matter of this Consent Decree.

15 60. Authority. The undersigned representatives for Plaintiff and Defendant
16 each certify that s/he is fully authorized by the party whom s/he represents to enter into
17 the terms and conditions of this Consent Decree.

18 61. The provisions of this Consent Decree apply to and bind the Parties,
19 including any successors or assigns. The Parties certify that their undersigned
20 representatives are fully authorized to enter into this Consent Decree, to execute it on
21 behalf of the Parties, and to legally bind the Parties to its terms.

22 62. The Parties agree to be bound by this Consent Decree and not to contest its
23 validity in any subsequent proceeding to implement or enforce its terms. By entering
24 into this Consent Decree, the Defendant does not admit liability for any purpose as to
25 any allegation or matter arising out of this Action.

1 IN WITNESS WHEREOF, the undersigned have executed this [Proposed]
2 Consent Decree as of the date set forth below.

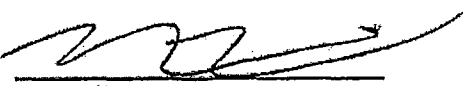
3
4 LOS ANGELES WATERKEEPER

5 Dated: 24 ^{March} ~~February~~ 2017 ^{MK}

6 by: 
7 Melissa Kelly
8 Attorney for Plaintiff
9 LA Waterkeeper


10 LOS ANGELES WATERKEEPER

11 Dated: 24 ^{March} ~~February~~ 2017 ^(D)

12 by: 
13 Bruce Reznik
14 Executive Director
15 LA Waterkeeper

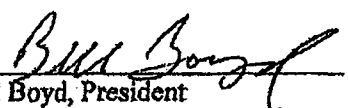
16 BALLARD SPAHR LLP

17 Dated: 24 ^{March} ~~February~~ 2017

18 by: 
19 Scott S. Humpheys
20 Attorneys for Defendant
21 Triumph Processing, Inc.

22 TRIUMPH PROCESSING, INC.

23 Dated: 17 ^{March} ~~February~~ 2017

24 by: 
25 Bill Boyd, President
26 Triumph Processing, Inc.

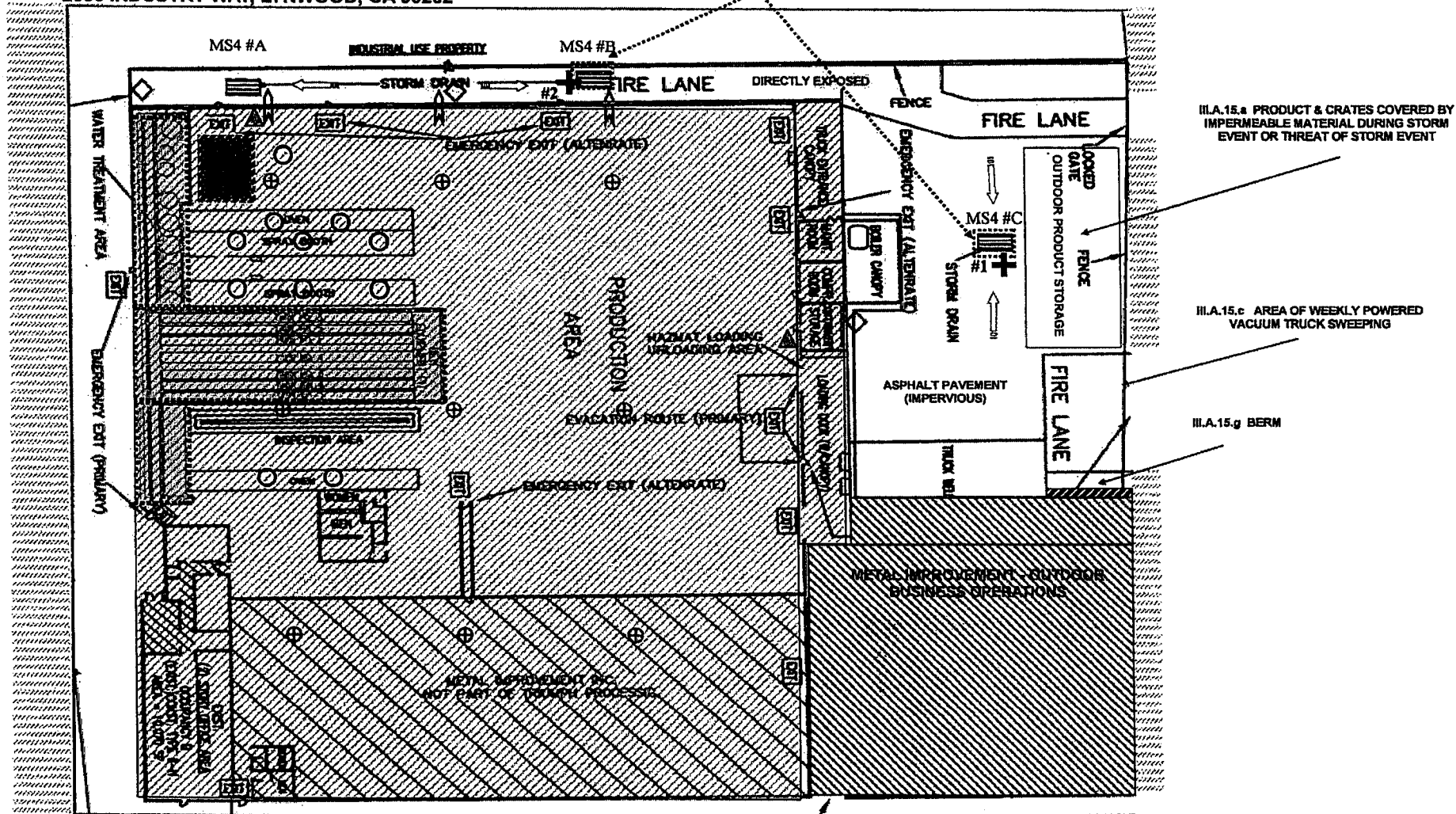
1 **IT IS SO ORDERED:**

2 Date: _____

3 Honorable Philip S. Gutierrez
4 DISTRICT COURT JUDGE
5 CENTRAL DISTRICT OF CALIFORNIA
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Exhibit A

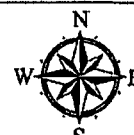
EXHIBIT A
TRIUMPH PROCESSING, INC.—PLANT 2
2588 INDUSTRY WAY, LYNWOOD, CA 90262



- | | | |
|-----------------------------|--|---|
| STORM SEWER INLET | FACILITY BOUNDARY | ROOF DRAIN OUTLET |
| SPILL KIT LOCATION | DRAINAGE DIVIDE | AUTHORIZED NSWDF (FIRE SYSTEM TEST) |
| HAZ WASTE STORAGE AREA | BUILDING ROOFTOP | ROOF EXHAUST STACK AREA (AREA OF POTEN. DUST GEN.) |
| HAZ WASTE STAGING AREA | EFFLUENT SAMPLE AREA | NEARBY WATER BODIES—SEE FIG. 1; COMPTON CREEK @ 1.4 MI WEST |
| HAZ CHEM AREA | NO SIG. SPILLS / LEAKS | |
| SURFACE DRAINAGE | NO AREAS OF OUTDOOR CLEANING OR MRTL USE | |
| NO ON-SITE WATER BODIES | ROOF DRAIN | |
| NO AREAS OF SURFACE EROSION | | |



SCALE: 1" = 60'



CERTIFIED MAIL



7016 2070 0000 6858 8369

GIDEON KRACOV

ATTORNEY AT LAW
801 S. GRAND AVENUE, 11TH FLOOR
LOS ANGELES, CA 90017

VIA CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Jeff Session, U.S. Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530-001

X-RAYED

MAR 28 2017

DOJ MAILROOM

X-RAYED

MAR 28 2017

DOJ MAILROOM